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IN THE

SUPREME COURT OF THE UNITED STATES.

C. RICHARD COLLINS and FLOYD COLLINS, Co-Partners, Doing Business as COLLINS BROTHERS OIL COMPANY,

Petitioners,

vs.

LACLEDE GAS COMPANY, a Missouri Corporation; PHIL DONNELLY, as Governor of the State of Missouri; JOHN M. DALTON, as Attorney General of the State of Missouri; MISSOURI PUBLIC SERVICE COMMISSION, and TYRE W. BURTON, CHARLES L. HENSON, E. L. McCLINTOCK, HENRY McKAY CARY, and M. J. McQUEEN, as Members of and Constituting the Missouri Public Service Commission, and GLENN D. EVANS, as General Counsel for the Missouri Public Service Commission,

Respondents.

Civil Action No. .....

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

Now come the Petitioners, Appellants in the Court below, and petition The Supreme Court of the United States for the granting of a Writ of Certiorari, directed to the United States Court of Appeals for the Eighth Circuit, to review the judgment of that Court in affirming a judgment of the United States District Court for the Eastern District of Missouri, entered in a civil action filed therein by Petitioners, and, as grounds for this Petition. Petitioners show:

I.

LOWER COURT PROCEEDINGS AND DISPOSITION.

The opinion of the United States Court of Appeals for the Eighth Circuit, filed in Cause No. 15,570, Civil Action, which Petitioners seek to have reviewed, is reported in

237 Fed. 2d 633. The Court of Appeals filed its opinion in said cause October 26, 1956. A copy of the opinion is appended to this Petition.

The Court of Appeals affirmed a judgment of the District Court entered March 7, 1956. The District Court dismissed with prejudice a complaint filed by Petitioners to obtain an interlocutory and permanent injunction to preserve the status quo of property taken from them under a decree of condemnation in proceedings filed in a State Court under a Missouri Statute charged to be repugnant to the Federal Constitution. This relief was sought until such time as the constitutionality of the State Statute under the 14th Amendment to the Federal Constitution, and, the validity of an order entered by a state administrative board under the authority of said Statute, which order was a condition precedent to the filing and maintaining of the suit for condemnation, shall have been finally determined in review proceedings then brought and still pending to determine the validity of the administrative order and the Federal constitutionality of the Statute. Petitioners had theretofore sought to obtain a stay of said administrative order and condemnation decree in the Missouri State Courts, including the highest Court of the State, but had been denied such relief. A copy of the findings of fact and conclusions of law and of the judgment of said District Court are likewise appended to this Petition.

No application for rehearing or for an order granting an extension of time within which to petition this Court for a Writ of Certiorari has been sought, obtained or granted.

II.

STATUTORY AUTHORITY FOR PETITION FOR WRIT OF CERTIORARI.

This Petition for Writ of Certiorari is filed pursuant to the statutory authority of Title 28, U. S. C. A., Section 1254 (1), which provides that a case in the United States Court of Appeals may be reviewed by the Supreme Court of the United States by Writ of Certiorari granted upon the petition of any party to any civil case before or after rendition of judgment.

III.

JURISDICTIONAL GROUNDS.

The grounds upon which the jurisdiction of this Court is invoked are stated as follows:

1. The United States Court of Appeals, Eighth Circuit, has decided an important question of Federal Law which has not been, but should be, settled by this Court.

2. The said Court of Appeals has held in the instant case that Section 2283, Title 28, U. S. C. A., prohibits a Federal Court from exercising jurisdiction to restrain the operation of a State Court decree of condemnation and to preserve the status quo of property taken thereby. This has been held notwithstanding that it appears from the record:

(a) That the ownership and possession of Petitioners' property has been taken in condemnation proceedings filed and maintained in a State Court under the authority of an administrative order (still subject to reversal) entered by a State Board pursuant to a Missouri Statute alleged to be repugnant to the 14th Amendment of the Federal Constitution, prior to

and before the conclusion of proceedings initiated by Petitioners in the State Courts (with ultimate and final jurisdiction in The Supreme Court of the United States) to obtain a determination of the validity of said administrative order and the Federal constitutionality of said State Statute in the Court of final jurisdiction;

(b) That the question of the existence of statutory authority for the condemnation of the particular property under the provisions of the State Statute, even if held to be constitutional, is a substantial and material issue involved in the condemnation proceedings itself, yet under the Missouri law Petitioners cannot at this stage take an appeal from said decree or obtain a stay or suspension of the transfer of the possession and ownership of the property thereby condemned; and

(c) Where it further appears from the record that the Petitioners' property is then being used by the condemnor and its condition and status is being changed and altered and ultimately will be destroyed by such use, all to the irreparable loss, damage and injury of Petitioners, if said State Statute at a later date shall be held to be unconstitutional by the Supreme Court of the United States, the Court of final jurisdiction in the pending review proceedings, and where it still further appears that Petitioners have sought to obtain in the State Courts, including the State Supreme Court, a stay of the effectiveness of the administrative order, the prosecution of the condemnation proceedings, and, the transfer of the possession of the property under the judgment of condemnation in the State Courts, until such time as Petitioners shall have had the opportunity to obtain a final determination of the issues involved in a review of the administrative order and condemnation

suit, but Petitioners have been denied such stay by the State Courts.

The United States Court of Appeals has sanctioned the actions of the State Courts, including that of the Supreme Court of Missouri, in permitting the condemnor to take and use the property of Petitioners under the facts of record in this cause without due process of law, contrary to the 14th Amendment to the Federal Constitution, and, the said Court of Appeals has decided an important question of Federal Law which has not been determined, but should be determined, by the Supreme Court of the United States.

If it appears from the record before the Federal Court that it is necessary for the Federal Court to issue a restraining order, until a citizen shall first have had the opportunity to obtain a determination of the Federal constitutionality of a State Statute in the Supreme Court of the United States, in order to preserve the property of the litigant from destruction and the denial of his Federal constitutional civil and property rights and guaranties, but the Federal Court cannot take jurisdiction because of the prohibition of said Section 2283, then said Section 2283, if so construed, is itself in violation of and repugnant to the 5th Amendment to the Federal Constitution and should be declared unconstitutional by the Supreme Court of the United States.

3. The decision of this Court in **Amalgamated Clothing Workers of America et al. v. Richman Brothers Co.**, 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed. 600, and the decisions of the Circuit Court of Appeals, Eighth Circuit, in **Evans v. St. Louis Housing Authority**, 226 F. 2d 750; **Norwood v. Parenteau**, 228 F. 2d 148, and **National Labor Relations Board v. Swift & Company**, 233 F. 2d 226, construing the effect of Section 2283, Title 28, U. S. C. A., are not controlling and decisive of the issue involved in the instant

case where it appears on the face of the record herein without further demonstration (but which did not appear from the records in the above cited cases without further interpretation of the law) that the Federal Constitutional rights of the Petitioners are now being invaded with resultant irreparable damage, loss and injury and Petitioners have theretofore petitioned the State Courts without avail for the protection of said constitutional rights and now have no recourse in such protection and in the preservation of their property thereunder, except and unless the Federal Courts shall take and exercise jurisdiction to stay the operation of the State Court decree of condemnation which effects the taking and the destruction of their property pending the conclusion in the court of last resort, to-wit: The Supreme Court of the United States, of proceedings for the review of the administrative order and the Federal constitutionality of the State Eminent Domain Statute under which their property rights are condemned in said condemnation suit, and, this question has not been decided but should be now considered and settled by the Supreme Court of the United States.

IV.

QUESTIONS INVOLVED.

The questions presented for review in this Court are therefore stated as follows:

1. Does Section 2283, Title 28, U. S. C. A., prohibit a Federal Court from exercising jurisdiction to restrain the operation of a State Court judgment of condemnation where it appears from the record: (a) that the condemnation proceedings are filed and maintained under the authority of an administrative order which is subject to reversal in review proceedings contesting the validity of said order and the Federal constitutionality of the State

Statute under which the order was entered; (b) the statutory authority for the condemnation of the particular property taken by condemnation, irrespective of the constitutionality of the Statute, is substantially involved in the condemnation suit but this question is not subject to review at the time the property is condemned by Court decree and possession and use of the property is taken under said Decree by the condemnor; and (c) the Petitioners have sought in the State Courts, including the highest State Court, to obtain a stay of the operation of the administrative order, of the filing and maintaining of condemnation proceedings and of the change of the status quo of the property taken by condemnation, pending the conclusion of proceedings for the review of said order, for the determination of the constitutionality of the condemnation statute and for the determination of the right to take the particular property in the condemnation suit under the alleged statutory authority therefor, but a stay has been denied, **NOTWITHSTANDING** that it further appears from the Record that the Petitioners' property in fact has been taken under the condemnation decree and they are daily suffering continuing damage, loss and irreparable injury to their property through use thereof by the condemnor and the failure of the State Courts to stay the operation of the administrative order and of the condemnation decree pending the conclusion of proceedings for the review in the Court of final jurisdiction the issues of the legality of the administrative order, the constitutionality of the condemnation statute, and, the statutory authority for the taking of the particular property in the condemnation proceedings under said condemnation statute?

2. Does Section 2283, Title 28, U. S. C. A., as construed in this case by the United States Court of Appeals, Eighth Circuit, contravene the 5th Amendment to the Federal Constitution and is said statute, therefore, unconstitutional

where it appears from the record that the Petitioners are daily suffering continuing irreparable damage, loss and injury through the operation and enforcement of a State Court judgment which is entered in proceedings for the condemnation of property, and, such proceedings cannot be filed and maintained without first procuring the approval of a state administrative board; and, where it also appears that the approval granted by the state administrative body, whose power to grant such approval is based upon a State Statute which is charged to be repugnant to the 14th Amendment of the Federal Constitution, which charge raises a substantial and material issue in proceedings for the review of the validity of the action of the administrative board, the legality of its order, and the constitutionality of the State Statute, and, until the conclusion of the review proceedings in the Court of final jurisdiction, said order of the administrative body is not final but is subject to reversal; and, where it still further appears from the record that Petitioners have sought to obtain a stay in the State Courts of the operation and effectiveness of the administrative order, of the filing and maintaining of the condemnation proceedings, and of the change of ownership and use of Petitioners' property under the sanction of the decree of condemnation, until such time as proceedings for the review of the legality of said order and the Federal constitutionality of the State Statute upon which it is based has been concluded in the Court of final jurisdiction, to-wit: The Supreme Court of the United States, and, also until such time as Petitioners shall have had the right to obtain a final determination in the proper Court upon the issue of the power and statutory authority for condemning the particular property in the condemnation proceedings under the terms of the said condemnation statute, but the Petitioners have been denied a stay in the State Courts as requested, and, the Federal Courts also refuse to exercise jurisdiction to grant such relief on the ground that Section 2283, Title 28, U. S. C. A., prohibits the granting

of such relief, despite the fact that Petitioners' property is, then, actually and physically being taken, invaded and destroyed under the sanction of the State Court decree of condemnation?

3. Are Petitioners denied due process of law and is their property being taken contrary to the 14th Amendment of the Federal Constitution under Section 2283, Title 28, U. S. C. A., as construed by the United States Court of Appeals, where it appears from the Record that Petitioners' property has been taken from them under a State Court decree of condemnation entered in a proceedings filed and maintained under a State Court Statute which is alleged to be unconstitutional and in violation of the 14th Amendment to the Federal Constitution, and where it further appears that the condemnor has taken possession of the condemned property under the condemnation decree and is then altering the physical condition and natural state of said property to the irreparable damage, loss and injury of Petitioners, notwithstanding that the Petitioners have sought to obtain in the State Courts a stay of the condemnation suit and of the operation of the decree of condemnation until such time as it is finally determined in the Court of proper and final jurisdiction, in proceedings then brought by Petitioners for a determination of the constitutionality of the state condemnation statute under the 14th Amendment to the Federal Constitution, but Petitioners have been denied such stay by the State Courts, including the highest Court in the State, and Petitioners therefore have no recourse in the protection of their Federal constitutional rights except and unless the Federal Courts shall take jurisdiction to preserve the status quo of their property until such time as the constitutionality of the State Statute has been determined in the Supreme Court of the United States, or, this Court has refused to consider such quesion?

V.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS PROCEEDING.

(a) The provisions of the Federal Constitution which are involved in this proceeding are those portions of the 5th and 14th Amendments, which provide as follows:

5th Amendment:

"No person shall be held to answer * * *, nor be deprived of life, liberty, or property, without due process of law; * * *."

14th Amendment:

"Section 1. * * *. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. * * *."

(b) The Statutes of the United States which are involved in this proceeding are Section 1254 (1), Title 28, U. S. C. A., under which this Petition for Certiorari is filed, and, Section 2283, Title 28, U. S. C. A., which the United States Circuit Court of Appeals, Eighth Circuit, has held to be controlling in this case and to preclude the Federal Courts from granting unto Petitioners injunctive relief which will have the effect of restraining a State Court action.

The material provisions of Title 28, Section 1254 (1), read as follows:

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before of after rendition of judgment or decree;"

Section 2283 of Title 28, U. S. C. A., provides as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

(c) The Statute of the State of Missouri which is primarily involved in this proceeding is referred to herein as the "Missouri Underground Gas Storage Act," or "Storage Act," and became effective as a law in Missouri ninety (90) days after May 31, 1953. The Storage Act is found in Chapter 393, Sections 410 to 510, inclusive, V. A. M. S. (R. S. Mo., 1949, Sections 393.410-393.510; Laws of Missouri, 1953, pp. 513-517). The provisions of this Statute are set out verbatim in the appendix to this Petition. The particular provisions of said Statute, however, which are most material in this Petition are found in Section 393.440, R. S. Mo., which reads, in part, as follows:

"Section 393.440. **Powers Not to Be Exercised Until Approved by Public Service Commission.** None of the following rights (referring to rights to condemn) * * * may be exercised by any gas storage company unless such company shall have first obtained an order from the Public Service Commission finding that the exercise of such right by such company will be in the public interest. Such order shall be made after hearing, and shall be effective and subject to application for rehearing and to judicial review, as in the case of other orders of the Public Service Commission."

Section 386.490, para. 3, R. S. Mo., 1949, relating to the effect of an order of the Missouri Public Service Commis-

sion (and to which Section 393.440 of the Storage Act has specific reference), provides as follows:

> "3. Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States."

Section 386.510, R. S. Mo., 1949, also governing procedure on appeals from orders of the Missouri Public Service Commission provides in part as follows:

> "* * * No Court in this State except the Circuit Courts and the Supreme Court or various courts of appeals on appeal shall have jurisdiction to review, reverse, correct or annul any order of the Commission or to suspend or delay the operation thereof or to enjoin or interfere with the Commission or the purpose of its duties. * * *"

Section 386.520, para. 1, R. S. Mo., 1949, also provides, with respect to the authority of a State Court to suspend the operation of an order of the Public Service Commission, in proceedings taken for the review thereof, as follows:

> "1. The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the Commission, but during the pendency of such writ, the Circuit Court in its discretion may stay or suspend, in whole or in part, the operation of the Commission's order or decision. No order so staying or suspending an order or decision of the Commission shall be made by any circuit court otherwise

than on three days' notice and after hearing, and if the order or decision of the Commission is suspended the same shall contain a specific finding based upon evidence submitted to the Court and identified by reference thereto, that great or irreparable damage would otherwise result to the Petitioner and specifying the nature of the damage. In case the order or decision of the Commission is stayed or suspended, the order or judgment of the Court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the Circuit Court, payable to the State of Missouri, and sufficient in amount and security to secure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the Commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the Commission, in case such order or decision is sustained."

VI.

STATEMENT OF CASE.

Certiorari is sought by Petitioners herein for the review of the judgment of the United States Court of Appeals (last 9 pages of Supplemental Record), which affirmed a judgment (Rec. 167, 168) of the United States District Court for the Eastern District of Missouri. The District Court dismissed with prejudice a complaint filed by Petitioners seeking to obtain an interlocutory and permanent injunction and for other relief.

On November 18, 1955, Petitioners filed in the District Court their Complaint wherein they sought to restrain

through a Three-Judge Court to be empanelled and organized under Sections 2281 and 2284 of Title 28, U. S. C. A., the enforcement, operation and execution of a Statute of the State of Missouri on the grounds of its Federal unconstitutionality (Rec. 1-125).

Petitioners also sought to preserve the status quo of property, to stay the transfer and change of possession thereof and the doing of any act by Respondents herein, or any of them, to alter the physical conditions and characteristics of said property under the sanction and authority of a decree of condemnation entered against Petitioners and said property by the Circuit Court of St. Louis County, Missouri (Rec. 37-41, 44).

This relief was prayed by Petitioners until such time as the validity of an order of the Public Service Commission, which authorized the filing of the Eminent Domain proceedings, and the constitutionality of the Missouri Underground Gas Storage Act under the State and Federal Constitutions, upon which Statute said order and condemnation proceedings were based, shall be determined in review proceedings, then pending, by the court of last resort (Rec. 37-41, 44).

To this complaint Respondents, Appellees below, filed a motion to dismiss. The Respondents, Laclede Gas Company and Missouri Public Service Commission, filed, in addition, alternative motions to strike and a supplement to their motion to dismiss (Rec. 127-142).

A statutory Three-Judge Court was organized and empanelled (Rec. 126, 143, 144), and after oral argument of the motions to dismiss the complaint, the Three-Judge Court upon its own motion dismissed itself from the case and returned the proceedings to the single judge (Rec. 144, 145).

Subsequently, on March 7, 1956, the District Court made findings of fact and conclusions of law (Rec. 165-167), and

found and concluded therein that Section 2283 of Title 28, U. S. C. A., precluded the granting of injunctive relief in the proceedings. Thereupon, on the same date, the District Court entered its judgment sustaining the motions to dismiss the complaint for injunction and dismissed it with prejudice (Rec. 167, 168), from which judgment an appeal was taken (Rec. 168, 169) to the United States Court of Appeals, Eighth Circuit.

On October 26, 1956, the Court of Appeals affirmed the judgment of the District Court and held that Section 2283, Title 28, U. S. C. A., prohibited injunctive relief under the issues raised by the complaint and motions to dismiss (last 9 pages of Supplemental Record).

The facts hereinafter stated, unless otherwise noted, are alleged in the complaint filed in the Federal District Court, or appear from Exhibits attached thereto (Rec. 1-125).

The Petitioners, C. Richard Collins and Floyd Collins, residents of Mt. Vernon, Illinois, are partners engaged in business under the style of Collins Brothers Oil Company (Rec. 1). They own, operate and develop oil and gas and mineral leases and have oil and gas leases on certain lands in St. Louis County, Missouri, underlying which Respondent, the Laclede Gas Company, a public utility serving the City of St. Louis and parts of St. Louis County, Missouri, desires to operate a gas storage reservoir (Rec. 1, 2, 5, 6).

In 1953 the General Assembly of the State of Missouri adopted an Act which will be referred to as the "Storage Act" or "Act", which purports to give a gas storage company, as defined therein, power to acquire through the exercise of Eminent Domain, underground reservoirs, strata and formation beds for the purpose of use through the injection of gas therein for storage, subsequent withdrawal and sale (Rec. 4). The Act forbids the condemna-

tion of any formation within 500 feet of the surface or which contain potable waters or oil or gas producible through primary production methods in commercially paying quantities (Rec. 3). The Act also forbids condemnation of any strata containing coal, enumerated ores, or any precious minerals producible on a commercially paying basis (Rec. 3).

The Act further provides Section 393.440, R. S. Mo., set out above, that no company may exercise this power of condemnation unless an order is first procured from the Missouri Public Service Commission (a state administrative board) finding that the exercise of the power of Eminent Domain by it will be in the "public interest" (Rec. 4).

The Laclede Gas Company, desiring to procure an order from the State Commission, filed an application with the Commission requesting that an order be entered finding that it will be in the "public interest" to acquire by condemnation four contiguous formations underlying some 6,000 acres of land specifically described and located mostly in St. Louis County, Missouri (Rec. 5). The formations sought by Laclede immediately underlie an oil producing formation from which Collins Brothers, Petitioners herein, were then and still are producing oil through primary production methods in commercially paying quantities (Rec. 6, 7). There is estimated to be more than 5 million barrels of oil in the oil bearing formation herein referred to as the Trenton and the oil and gas leases held by Collins Brothers are upon acreage underlying which is more than 50 per cent of the oil in place (Rec. 35).

Collins Brothers sought and obtained leave to intervene in the proceedings before the Missouri Public Service Commission. In these proceedings, Collins Brothers charged in a motion to dismiss the application filed with the Commission, among other things, that the Commission

was without jurisdiction to grant the application of Laclede inasmuch as the Storage Act was violative of both the Constitutions of the State of Missouri and the United States and that Collins Brothers was denied due process of law, contrary to the 14th Amendment of the Federal Constitution (Rec. 6).

Under date of November 19, 1954, the Commission overruled the motion of Collins Brothers and entered its order finding that it would be in the "public interest" for Laclede to exercise the right of condemnation to acquire the four formations sought by it in connection with and development and operation by it of a gas storage project underlying specifically described 6,000 acres, including lands from which Collins Brothers was then producing oil in commercially paying quantities through primary production methods. The Commission made its order effective as of December 3, 1954 (Rec. 7, 11, 12).

It is a statutory prerequisite under the Laws of Missouri for obtaining a review of an order of the Public Service Commission in the State Courts that a motion for rehearing be filed with the Commission, such review to be confined to matters raised in the motion for rehearing. Collins Brothers filed a motion for rehearing and therein charged that the Commission was in error in finding from the evidence produced before it that it was in the "public interest" for Laclede to exercise the power of Eminent Domain to acquire the particular formations underlying the lands described in said order. Collins Brothers realleged the grounds of their previous motion to dismiss the application filed with the Commission and renewed the charge that the Storage Act deprived them of their property without due process of law, contrary to the 14th Amendment of the Federal Constitution and that said Act was, therefore, unconstitutional (Rec. 13, Ex. A, Rec. 46-52).

In the motion for rehearing, Collins Brothers prayed (Ex. B, Rec. 52-62) that the Commission set aside its order of November 19, 1954, as being unreasonable, invalid, unlawful, arbitrary, capricious, unconstitutional and not supported by material, credible or substantial evidence,

> "and that pending the disposition of this petition for rehearing, that the effective date of the order herein entered be stayed, and that the applicant be denied any right to proceed thereunder until final action may be had in appropriate review proceedings in accordance with the requirements of law in such cases made and provided" (Rec. 13).

The Commission overruled the motion for rehearing on December 7, 1954, denied a stay of its order, and provided that its order shall be effective on the date thereof (Rec. 14). On January 4, 1955, pursuant to the right preserved by Section 393.440, R. S. Mo., of the Storage Act (quoted above) to obtain a review of orders of the Commission entered under the Storage Act and also pursuant to applicable law of Missouri governing proceedings for the review of orders of the Commission, Collins Brothers filed an application for writ of review with the Circuit Court of Cole County, Missouri (Rec. 14, Ex. C, Rec. 62-70).

The Circuit Court of Cole County, Missouri, issued its writ of review directing the Commission to return the record and proceedings had and taken before it (Rec. 14-15), and within the time required by law the Commission made a return thereto.

Upon the docketing of the application for writ of review and the issuance thereof on January 4, 1955, Collins Brothers filed a petition in the United States District Court, Western Judicial District, Central Division of Missouri, for the removal of the review proceedings from the Cole County, Missouri, Circuit Court to the said Federal

Court and complied with all proper procedural steps therefor as required by law (Rec. 15).

Subsequent to the filing of the review proceedings, and while then and now undisposed of, Laclede, under the authority of the order of the Commission finding that it was in the "public interest" to exercise the power of Eminent Domain, filed a petition for condemnation on January 21, 1955, in the Circuit Court of St. Louis County, Missouri, against Collins Brothers and others, to take the interests which said Defendants have and claim in the four underground formations underlying approximately 1800 acres of land (Rec. 18).

Collins Brothers filed a motion to dismiss the condemnation suit in the Circuit Court of St. Louis County, Missouri (Rec. 23), alleging therein, among other stated grounds, that the Storage Act under which the action was being taken, including the order of the Commission, was invalid and that their property was being taken without due process of law, contrary to the 14th Amendment to the Federal Constitution and that the Storage Act was, therefore, unconstitutional (Ex. E, Rec. 73-78). This motion to dismiss was overruled by the said State Court, following which Collins Brothers filed a motion to stay the condemnation proceedings pending the determination of the review of the order of the Commission, but this motion to stay was also denied and they were given leave to file an answer in the condemnation proceedings (Rec. 23).

Collins Brothers filed an answer to the petition for condemnation and an amendment thereto (Rec. 23, 24, Ex. F, Rec. 78-82). It was again alleged in said answer, among other things, that the Gas Storage Act permits the taking of the private property of Collins Brothers without due process of law, and is, therefore, unconstitutional. It was further specifically charged in the amendment to the answer (Rec. 82), as follows:

> "and, further, the gas stored by the Plaintiff in the St. Peter Sandstone will escape into the Kimmswick (formation containing oil), and other formations, and destroy the property of the defendants."

At the trial Collins Brothers were denied the right to cross-examine witnesses for the condemnor relative to the resultant effect of the injection of gas in the four formations sought to be condemned and from the operation of the storage project, notwithstanding that Collins Brothers specifically charged in their answer that the storage gas will escape into the overlying Trenton oil-bearing formation and destroy their property (Rec. 24, 25).

Collins Brothers also offered to prove that the necessary and direct result and effect of the injection of gas by the condemnor would be that the storage gas would leak and escape upwards, penetrate through the sealing beds and reach to, into and through the oil-bearing formations, and that the storage gas thus would directly and physically invade and penetrate into the oil formation and destroy all future oil production and recovery therefrom (Rec. 25).

It was charged in the Complaint filed in the District Court that if Collins Brothers oil be thus destroyed, as they offered to prove, but which evidence the Court refused to hear, then their property is taken without due process of law and in direct violation and prohibition of the Storage Act, Section 393.460, R. S. Mo. (see Appendix), which expressly denies the right to exercise the power of Eminent Domain to acquire for gas storage any

> "* * * stratum or formation containing natural gas or oil producible through primary production methods in commercially paying quantities, * * *."

At the close of the condemnor's case in the condemnation suit, and again at the close of the entire case, Collins Brothers filed a motion to dismiss said suit (Rec. 27-29,

Ex. G, Rec. 83-97). They charged therein that if the Storage Act lends itself to the construction that the condemnor may indirectly take and destroy the oil reservoir of Collins Brothers through the necessary and direct physical invasion of gas escaping from the storage reservoir and Collins Brothers may only resort to an action for damage for such injury, then that the Storage Act is in violation of the Fourteenth Amendment to the Federal Constitution, and is, therefore, unconstitutional in its application to the facts of this case (Rec. 28, 29).

These motions to dismiss filed in the condemnation proceedings were overruled.

Thereafter, on October 13, 1955, after filing of answer and trial in the Circuit Court of St. Louis County, said Court entered a decree of condemnation against Collins Brothers and condemned their interest in the four underground formations (Rec. 29). The Court in its decree appointed Commissioners to assess the damages to be allowed to the persons claiming any interest in the property condemned pursuant to the law of Missouri governing Eminent Domain proceedings, Chap. 523, R. S. Mo.

Under the Law of Missouri governing condemnation proceedings, upon the Commissioners filing in duplicate with the Court a report assessing damages, the recording of a certified copy thereof in the Recorder's Office, and, the payment by the condemnor of the damages so assessed, the condemnor may forthwith take possession of the condemned property and may then proceed to devote the property to the uses for which it has been taken in condemnation. All proceedings subsequent to the report of the Commissioners affect only the amount of compensation ultimately to be allowed and paid for the condemned property (Rec. 30, 31).

The decree of condemnation and order appointing Commissioners is an interlocutory decree under the Law of

Missouri and no immediate or direct appeal under the law may be taken from the condemnation decree until damages have been assessed by a jury on exceptions to the Commissioners' Report, if filed by any interested party, and a final judgment has thereafter been entered by the Court on the question of damages; or upon and after the failure to file objections (Rec. 31). (No final judgment had been entered at the time the complaint was filed in the Federal District Court nor has a final judgment been entered to the date of this Petition for Writ of Certiorari.)

Subsequent to the filing by Laclede of the condemnation suit in the Circuit Court of St. Louis County, Missouri, on January 21, 1955, Laclede, on January 24, 1955, filed a motion in the United States District Court, Western District, Central Division, to remand the review proceedings to the Cole County, Missouri, Circuit Court from which it had been removed on removal petition theretofore filed by Collins Brothers (Rec. 18, 19).

The Federal District Court sustained the motion to remand and in its opinion filed held that the filing of proceedings for the review of the Commission order did not constitute the bringing of a new proceedings but was a mere continuation of the administrative proceedings had before the Commission and that the review of said administrative order was not a civil action of which the District Courts of the United States have original jurisdiction (Rec. 19, 20).

Following the remand of the review proceedings to the State Court, Collins Brothers filed a motion in the said Circuit Court of Cole County, Missouri, to stay the Commission order pending a determination of the review proceedings (Rec. 21, 22). It was specifically charged in said motion that the Storage Act, under which the Commission entered its order, is unconstitutional and denies Collins Brothers the due process of law guaranteed by the State

and Federal Constitutions and that the guarantee of due process of law requires that administrative proceedings affecting property rights shall be subject to review in the Courts as to the facts and the law and to a judicial determination made on notice and hearing (Ex. D, Rec. 71, 72).

The Circuit Court of Cole County, Missouri, after the hearing of Arguments on the record before it on review, and also upon the motion to stay filed by Collins Brothers, denied said motion to stay (Rec. 22) and entered a docket order under date of August 15, 1955 (without any reference to the constitutionality of the Gas Storage Act or even any consideration thereof), affirming the finding and order of the Missouri Public Service Commission (Rec. 20, 21).

Subsequent to the affirmance of the order of the Commission by the Cole County Circuit Court, Collins Brothers perfected an appeal from said judgment to the Supreme Court of the State of Missouri, where the matter was then pending before the Court En Banc, and said appeal was undisposed of at the time of the filing of the Complaint by Collins Brothers for injunctive relief in the United States District Court (Rec. 21).

This appeal to the Supreme Court of Missouri has now been disposed of, subject to further appeal to the Supreme Court of the United States.

On July 9, 1956, the Supreme Court of Missouri filed its opinion affirming the judgment of the Circuit Court of Cole County, Missouri, approving the order of the Missouri Public Service Commission. Motion for rehearing and suggestions in support thereof was filed by Collins Brothers in the Supreme Court of Missouri on July 25, 1956, in accordance with the Missouri Law. Under date of September 10, 1956, the Supreme Court of Missouri entered its order denying the motion of Collins Brothers for rehearing of the review proceedings.

Subsequent to the denial of a rehearing by the Supreme Court of Missouri, Collins Brothers, under date of December 5, 1956, filed with the Clerk of the Supreme Court of Missouri their notice of appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Missouri in said review proceedings. The review proceedings are now pending in the Supreme Court of the United States on this notice of appeal with jurisdictional briefs to be submitted and filed as required by the Rules of this Court within sixty (60) days from the filing of said notice of appeal.

Following the entry of the decree of condemnation on October 13, 1956, in the Circuit Court of St. Louis County, Missouri, Collins Brothers filed in the United States District Court for the Eastern District of Missouri their Complaint upon which these proceedings originate, for the granting of an interlocutory and permanent injunction to restrain the Laclede Gas Company and the co-respondents in this case from taking any action to enforce the decree of condemnation and to restrain the Laclede Gas Company from taking possession of the property condemned and from injecting any gas into the four underground formations so condemned, and from effecting a change in the natural state and condition of said formations. Such relief was requested until such time as the validity of the order of the Public Service Commission, the constitutionality of the Storage Act under the Federal Constitution, and the issue of the statutory authority for the taking of the particular property under the Storage Act in the condemnation proceedings proper has been determined in the Court of last resort and of final jurisdiction (Para. 35, Rec. 37-41, 44).

It was charged in said Complaint that the filing of the Commissioners' Report assessing damages as provided under the Missouri Law, was imminent and that upon the

filing of said report Laclede would immediately thereafter pay unto the Registry of the Circuit Court of St. Louis County, Missouri, the damages assessed by said Commissioners and that possession of the property condemned in the condemnation proceedings would be forthwith and immediately taken by Laclede as permitted under the Eminent Domain Statutes of Missouri and that Laclede would forthwith and immediately thereafter inject into said four underground formations natural gas, which action would alter and change the status of the natural condition and physical characteristics of said formations so condemned, and also that the gas injected into these formations would, as a necessary and direct consequence thereof, leak out of or escape from these formations and physically and directly invade the overlying Trenton oil-bearing formation and result in a displacement of oil therein, and ultimate prevention of the recovery of oil and the destruction of the property rights of Collins Brothers therein and therto, contrary to the prohibition of the Storage Act, and that Collins Brothers would sustain an immediate and continuing irreparable damage, loss and injury and their property would be taken from them without due process of law and contrary to the 14th Amendment of the Federal Constitution, except and unless the Federal District Court shall take and exercise jurisdiction to stay the operation of the decree of condemnation until such time as Collins Brothers shall have had the opportunity to obtain a final determination in the court of last resort the question of the validity of the Commission order and the Federal constitutionality of the Storage Act under the 14th Amendment to the Federal Constitution (Para. 35, Rec. 37-44).

Subsequent to the filing of the Complaint for Injunction in the United States District Court, Collins Brothers, under date of December 6, 1955, filed a motion with the Supreme Court of Missouri to stay or restrain the Laclede Gas Com-

pany from appropriating the property of Petitioners for injection and storage of gas under the judgment for condemnation theretofore obtained by said Laclede in the Circuit Court of St. Louis County, Missouri. This stay was sought by Collins Brothers pending the determination by the Supreme Court of Missouri, sitting en banc, and also by the court of final jurisdiction, the question of the constitutionality of the Missouri Underground Gas Storage Act (Rec. 147-165). Under date of December 12, 1955, the Supreme Court of Missouri, being the highest Court of the State, entered the following order on said Motion:

> "Now at this day, the Court, having seen and considered Appellants' motion to stay or restrain the Respondent, Laclede Gas Company, from appropriating property for injection and storage of gas under judgment for condemnation, pending determination of constitutionality of Underground Gas Storage Act, doth order that said motion be, and the same is hereby, overruled" (Rec. 146).

The Respondents filed in the United States District Court on January 19, 1956, a motion to dismiss and, in the alternative, a motion to strike portions of the Complaint for Injunction filed by Collins Brothers (Rec. 127-132). Later, a supplement to this motion to dismiss was filed (Rec. 137-139), by the Respondent, Laclede. It was stated in the Motion to Dismiss that the Respondent, Laclede Gas Company, had paid the damages assessed by the Commissioners, appointed in the decree of condemnation, as required by Missouri law, that possession of the condemned property had been taken, and, that Laclede was then injecting gas for storage into the formations taken in the condemnation proceedings. In the supplement filed to the motion to dismiss, the filing by Collins Brothers of the motion to stay with the Supreme Court of Missouri, and the denial thereof by that Court, was recited and urged as an

additional ground for the dismissal of the complaint for injunction filed in the Federal District Court.

On January 19, 1956, the Federal District Court heard arguments of the parties upon the issues raised by the Complaint for Injunction filed by Collins Brothers and the motions to dismiss and supplements thereto filed by Respondents and the case was submitted to the said District Court, solely upon the issues raised by the Complaint and motions to dismiss.

It was specifically charged by Collins Brothers in the Complaint filed in the District Court (Rec. 14) that the

> "* * *action of the Missouri Public Service Commission in denying a stay of the effective date of its order was so unreasonable, arbitrary and unlawful under the facts of said cause and pending a review of the evidence and a determination of the constitutionality of the Storage Act, which was placed in issue, by the Court of Last Resort as to be and constitute a denial of due process of law to Collins Brothers."

With specific reference to the necessity of a termination of review proceedings prior to the order of the Public Service Commission having any legal finality as a condition precedent to the exercise of jurisdiction by the St. Louis County Circuit Court in the condemnation proceedings filed by Laclede, it was alleged by Collins Brothers in their Complaint filed in the United States District Court (Rec. 32, 33) as follows:

> "(1) The Circuit Court of Saint Louis County, Missouri, is wholly without jurisdiction of the subject matter of the condemnation suit and of the parties Defendant, Collins Brothers, inasmuch as the Gas Storage Act gives no jurisdiction to any Court for

condemnation of underground stratum for gas storage purposes, until the Order of the Missouri Public Service Commission finding that it is in the public interest for Laclede Gas Company to exercise the power of Eminent Domain is a complete and final order as to both (a) the fact of 'public interest' and (b) the constitutionality of the statute upon which the order is predicated (to-wit: the Underground Gas Storage Act), and, the order of the Public Service Commission in the instant controversy cannot be final, nor can any rights thereunder be asserted by Laclede by filing, maintaining and prosecuting the said condemnation suit, until the constitutionality of the Gas Storage Act under the Federal Constitution has been determined by the Court of Last Resort, to-wit: The Supreme Court of the United States, in the Review proceedings now pending, or, until such Review proceedings are abandoned by Collins Brothers or the same are otherwise terminated in accordance with law, and, this, notwithstanding that Collins Brothers have been denied a stay of the order of the Commission and a stay of the condemnation suit pending Review of the Commission's Order, for to deny to Collins Brothers the privilege of Review of the Commission's Order and a determination of the validity, legality and constitutionality of the Gas Storage Act, is in itself a taking of private property of Collins Brothers without due process of law and violative of the 14th Amendment to the Constitution of the United States and irrespective of whether the denial be by the Executive, Legislative or Judicial authority."

In the Complaint filed by Collins Brothers in the Federal District Court it was specifically charged that the action of the Cole County Circuit Court in denying the motion to stay filed by them, while said cause was pending before it for a review of the Commission order and while condem-

nation proceedings were then pending for the taking of Collins Brothers property by condemnation in the Circuit Court of St. Louis County, Missouri, was unlawful and was a clear abuse of the discretion vested in said Court under Section 386.520, R. S. Mo., and that the denial of a stay of the order of the Commission until such time as review proceedings are terminated and until such time as the constitutionality of the Gas Storage Act has been determined is, a fortiori and of itself, a denial of due process of law, in violation of the 14th Amendment to the Federal Constitution (Rec. 22, 23).

In Paragraph 36 of the Complaint filed in the Federal District Court (Rec. 41-43), it is charged by Collins Brothers that Section 2283 of Title 28, U. S. C. A., is not a bar to the granting of injunctive relief under the Complaint in order to secure to Collins Brothers a protection of their property under the provisions of the Federal Constitution. It was there alleged that said Section does not bar relief under and by virtue of the facts apparent from the Complaint and the principles of equity and justice guaranteed by the Federal Constitution; nor where

> "necessary to prevent Federal constitutional rights, privileges and guaranties from being evaded by subterfuge and indirect methods and the Federal constitution from being meaningless and said constitutional protections but a sham and pretense; and this particularly since otherwise Collins Brothers are without remedy",

or where, as was charged, the decree of condemnation is wholly void and of no legal force or effect whatever.

Collins Brothers charged in their Complaint in the Federal District Court that they are entitled to such injunctive relief as shall be required to prevent the enforcement, operation and execution of the Storage Act, the order of

the Commission, and the transfer of property rights to Laclede under the condemnation decree, pending the proper determination of the validity of the Storage Act under the Constitution of the United States; and, that the Complaint does not purport to take from Laclede any rights and properties which it now has or enjoys but rather seeks to preserve the status quo of the property rights now owned and enjoyed by Collins Brothers pending this determination (Rec. 43, 44).

On March 7, 1956, after oral argument on the merits of the Complaint for Injunction and Motions to Dismiss and supplements thereto, as aforesaid, the Federal District Court found and concluded that Section 2283, Title 28, U. S. C. A., precluded the granting of injunctive relief on the Complaint (Rec. 165-167). Thereupon, the Court (Rec. 167, 168) entered its judgment as follows:

> "This cause came on to be heard on Defendants' motions to dismiss and the Court, having considered the pleadings, the motions to dismiss, and the arguments and briefs of counsel, and the Court having made findings of fact and conclusions of law and having granted the said motions,
>
> "It is hereby ordered, adjudged and decreed that Plaintiffs' action be and it is hereby dismissed with prejudice on the merits, and that Defendants recover their costs."

From this judgment Collins Brothers, within the time permitted by law, took and perfected an appeal to the United States Circuit Court of Appeals, Eighth Circuit. Subsequently, this appeal came on for oral argument before the Circuit Court of Appeals, following which the said Court of Appeals affirmed the judgment of the Federal District Court and filed its opinion in said cause October 26, 1956.

Collins Brothers, Petitioners herein, seek to obtain from this Court the issuance of a Writ of Certiorari to obtain a review of the judgment of the said Court of Appeals for the Eighth Circuit. The Petitioners charge the judgment of the Court of Appeals to be in error and to have decided an important question of Federal Law which has not been but should be settled by this Court.

VII.

ARGUMENT.

Collins Brothers, Petitioners herein, filed a complaint in the Federal District Court to restrain the Respondent, Laclede Gas Company, from taking actual possession of Collins Brothers' property and changing or altering its physical condition through the injection of gas under the sanction of a condemnation decree entered in the State Court, until such time as the court of last resort and final jurisdiction has had the opportunity to determine, (1) the validity of an order of the Missouri Public Service Commission which authorized Laclede to condemn their property, (2) the validity of the condemnation decree entered by the State Court, and (3) the constitutionality of the Storage Act under both the State and Federal Constitutions.

The Missouri Underground Gas Storage Act permits a gas storage company to acquire underground formations through condemnation for the purpose of injecting therein natural gas for storage, subsequent withdrawal and sale to the public. The Act prohibits the condemnation of formations lying within 500 feet of the surface and formations which contain oil and gas producible through primary production methods in commercially paying quantities. The Act also prohibits the condemnation of formations which contain certain enumerated ores and potable waters. It is a condition precedent to the exercise of Eminent Domain, under the Act, that the gas storage company first obtain an order from the Missouri Public Service Commission (an administrative board) finding that the exercise of the right of condemnation to acquire particular property shall be in the "public interest."

Laclede obtained an order from the Commission finding that it shall be in the "public interest" to acquire four

underground formations underlying some 6,000 acres of land lying mostly in St. Louis County, Missouri. The acreage involved included land upon which Collins Brothers had existing Oil and Gas Leases and from which they were then and now are producing oil through primary production methods in commercially paying quantities.

Collins Brothers, in accordance with the applicable law in Missouri, filed appropriate proceedings in the State Courts to obtain a review of the legality of this order. It was charged that the Storage Act is repugnant to the 14th Amendment of the Federal Constitution. This issue was properly raised and is a substantial and material federal question involved in the review proceedings. The Supreme Court of Missouri, the highest Court in the State, has at this time affirmed the Commission order and has ruled the Storage Act to be constitutional. From this judgment the Petitioners have filed under date of December 5, 1956, with the Clerk of the Supreme Court of Missouri a notice of appeal to the Supreme Court of the United States. Under the Rules of this Court Petitioners are required to file a jurisdictional brief within sixty (60) days. The question of the Federal constitutionality of the Storage Act is substantially and materially involved in the appeal to the Supreme Court of the United States.

Collins Brothers sought to obtain a stay from the Public Service Commission of the effective date of the administrative order finding that it shall be in the public interest for Laclede to acquire their interests in the underground formations through Eminent Domain. This request was denied by the Commission.

After Collins Brothers initiated, within the time provided by law, proceedings for the review of the Commission order, and on January 21, 1955, Laclede filed a suit for condemnation in the Circuit Court of St. Louis County,

Missouri, to take the interests which Collins Brothers and others have and claim in the four underground formations. Collins Brothers again raised the issue of the constitutionality of the Storage Act in the condemnation suit and filed a motion in said proceedings for the stay of the condemnation proceedings until such time as it shall be determined that the Commission order was valid and the Storage Act was constitutional under the Fourteenth Amendment to the Federal Constitution. This motion to stay was denied and overruled.

Collins Brothers were ruled to answer in the condemnation proceedings and in their answer they pleaded that the use of the four formations sought to be condemned for the injection of gas would operate to destroy the production of oil by Collins Brothers in the Trenton oil-bearing formation immediately overlying the proposed storage reservoir. On the trial of the issues raised in the Eminent Domain proceedings, Collins Brothers offered to prove by their own witnesses and also through the witnesses of Laclede that as the unavoidable consequence and use of the formations sought to be condemned, and as the result of the injection of gas therein, the storage gas would leak or otherwise escape from the storage reservoir and would invade and physically penetrate through and into the overlying Trenton oil-bearing formation, resulting in the ultimate prevention of the recovery of oil and destruction of their property. The Court refused to accept any evidence upon this issue. At the close of the condemnor's case and at the close of the entire case, Collins Brothers filed a motion to dismiss the condemnation proceedings, asserting that there was no statutory authority for the condemnation of the particular formations by the condemnor in the Eminent Domain proceedings, inasmuch as the necessary consequence of the use of the condemned formations would produce the direct physical invasion and destruction of the oil-bearing formation and that the condemnation of an

oil-bearing formation was prohibited by the Storage Act, and condemnors were, therefore, precluded from condemning and the Court was without jurisdiction to allow the condemnation of the formations proposed to be used for storage, as otherwise that would be accomplished indirectly, which was directly prohibited by the Statute. It was also asserted in these motions that the Commission order was not final on the issue of the legality of that order so long as the Statute under which the order was entered had not been determined to be constitutional under the Fourteenth Amendment in proceedings then pending for the review of the Commission order in the Court of final jurisdiction. These motions to dismiss filed by Collins Brothers at the trial of the condemnation proceedings were denied and overruled by the State Court.

Following the filing of the proceedings for review of the Commission order in the Circuit Court of Cole County, Missouri, to which Court such proceedings are, in the original instance, required to be filed under the applicable law, Collins Brothers filed a motion to stay the operation of the Commission order until the conclusion of review proceedings testing the legality of the order and the Federal constitutionality of the Storage Act. Said Circuit Court denied and overruled this motion for stay and affirmed the order of the Commission. From this judgment of the Circuit Court of Cole County, Missouri, Collins Brothers perfected an appeal to the Supreme Court of Missouri, resulting in the disposition of the case on appeal in that Court, as stated above.

In the interim of time from the affirmance by the Circuit Court of Cole County, Missouri, and the ultimate decision of the Supreme Court of Missouri, the Eminent Domain proceedings filed by Laclede continued in the Circuit Court of St. Louis County, Missouri, and under date of October 13, 1955, that Court entered a decree of condemnation

whereby the interests of Collins Brothers in the four underground formations were condemned in favor of Laclede. Commissioners were appointed in the decree, in accordance with the requirements of Missouri law, to assess the damages sustained by interested owners in the condemnation of the specific formations condemned. Under Missouri Law, a decree of condemnation is an interlocutory decree, from which no appeal may be perfected and no appeal from the condemnation proceedings is permitted under the Missouri Law until the Court has entered a final judgment following the return of the Commissioners' reports and the disposal of the issues of damages that may have been raised in the condemnation proceedings through objections filed to the Commissioners' report by the parties in the condemnation proceedings.

Notwithstanding that the decree of condemnation is interlocutory, the Missouri law provides that upon the filing by the Commissioners of their report assessing damages in favor of the landowners whose property has been taken by condemnation and the payment of the amount of said damages by the condemnor unto the Registry of the Court, the condemnor is then permitted to take possession of the condemned property and to then devote said property to the use for which it was condemned, and this, notwithstanding that the issue of damages has not as yet been determined or a final judgment of condemnation entered by the Court.

Following the entry of the decree of condemnation, Collins Brothers, Petitioners herein, under date of November 18, 1955, filed their complaint in the United States District Court for the Eastern District of Missouri, Eastern Division, wherein they sought to obtain an injunction against Respondent, Laclede, and their Co-respondents in this case, to suspend or stay the operation of the decree of condemnation and to preserve the status quo and physical condi-

tion of the four formations which had been theretofore condemned by action of the Circuit Court of St. Louis County, Missouri, in the Eminent Domain proceedings. The facts heretofore related are set forth in said complaint, together with the allegation that Collins Brothers had sought to obtain a stay of the proceedings in the State Courts until the constitutionality of the Storage Act and the validity of the Commission order had been determined, but such requests for stay had been denied by the State Courts.

The Complaint for Injunction was not heard immediately and on December 6, 1955, Collins Brothers filed a motion with the Supreme Court of Missouri, sitting En Banc, requesting that Court to suspend the operation of the decree of condemnation until such time as it could be determined in the court of last resort whether the Commission order was valid, the Storage Act was constitutional under the 14th Amendment to the Federal Constitution, and whether there was statutory authority under the Storage Act to condemn the specific formations involved in the Eminent Domain proceedings. The Supreme Court of Missouri categorically and without comment denied and overruled this motion.

Laclede and Co-Respondents, Defendants in the Federal District Court, filed motions to dismiss the Complaint filed by Collins Brothers and supplements to their motions calling to the attention of the District Court that Laclede had taken possession of the formations condemned in the State Court and was then injecting gas in storage. It was also pointed out to the District Court that Petitioners, Collins Brothers, had applied for a stay of the Commission order and decree of condemnation to the Supreme Court of Missouri and such request had been denied and on the oral argument of the issues raised by the complaint and said motions to dismiss, Laclede tendered a certified copy of the motion for stay filed by Collins Brothers in the Su-

preme Court of Missouri and of the order of that Court denying and overruling said motion.

It was charged in the motions to dismiss filed by Respondents that Section 2283, Title 28, U. S. C. A., prohibited the District Court from granting to Petitioners the injunctive relief requested by them in the Complaint. This position was argued and the United States District Court dismissed the Complaint filed by Petitioners, Collins Brothers, on the ground that Section 2283, Title 28, U. S. C. A., prohibited it from exercising jurisdiction to grant injunctive relief since the issuance of such would be to enjoin an action in the State Court.

An appeal was taken by Collins Brothers from this judgment to the United States Court of Appeals, Eighth Circuit, and on October 26, 1956, the Court of Appeals affirmed the judgment of the District Court and held that Section 2283, Title 28, U. S. C. A., prohibiting the granting of the relief requested by Petitioners.

The sole issue, therefore, before this Court on appeal is, whether Collins Brothers are entitled to injunctive relief to preserve the status quo of their property, then being altered to their irreparable damage and injury, pending the conclusion of authoritative review proceedings, in view of the fact that Collins Brothers have sought to obtain a stay in the State Courts, which has been denied and they have no recourse in the protection of their Federal constitutional rights unless the Federal Court shall take and exercise jurisdiction despite the literal provisions of Section 2283, Title 28, U. S. C. A.

It is submitted that so long as an administrative order is subject to alteration, modification, change or reversal on the question of the Federal constitutionality of the Statute under which the administrative body exercised jurisdiction, the administrative order cannot be final to the extent that private property may be taken under its authority within

the meaning of the 14th Amendment to the Federal Constitution upon the assumption that the order is valid.

The issues in this case are to be determined upon the question of the finality and legal force and effect that shall be attributed to an administrative order during the time that proceedings are pending to determine the Federal constitutionality of the State Act under which said order was entered. The administrative order in this case cannot be final in the legal sense that a condemnation suit may be maintained and prosecuted to conclusion with change of ownership of property and use thereof to the loss, damage and injury of the property owner, so long as there is a substantial and meritorious charge that the Storage Act is repugnant to the 14th Amendment to the Federal Constitution.

Under these circumstances, it was not within the discretionary power of the Public Service Commission, the Circuit Court of Cole County, the Circuit Court of St. Louis County, and the Supreme Court of Missouri, to deny a stay or supersedeas of the Commission order or of the operation of the decree of condemnation subsequently entered under the sanction of said administrative order. The question is one of the finality of the order of the Commission and under the facts presented by the Complaint filed by Petitioners, Collins Brothers, they were, as a matter of absolute right, entitled to a stay or supersedeas of that order, or to any other appropriate relief required or deemed necessary to restrain Laclede from proceeding under the faith of said order until its validity has been conclusively determined in the Court of final jurisdiction.

Therefore, if relief be denied to Collins Brothers under the facts existing in this case, either under the law of the State of Missouri or by the Courts of the State of Missouri, in an interpretation of the law, then Collins Brothers have no other recourse under the guaranties of

the 14th Amendment to the Constitution than to request appropriate relief from the Federal Courts to preserve their constitutional rights, for if their constitutional rights cannot be protected under the facts of record in this case, then they are denied due process of law under the 14th Amendment to the Federal Constitution.

If Section 2283, Title 28, U. S. C. A., is held to prohibit the granting of such relief to Petitioners when it is clearly demonstrated on the face of the record that they are denied due process of law unless their property be preserved intact until the conclusion of authoritative proceedings to determine the validity of the order and the constitutionality of the Storage Act, then Section 2283, Title 28, U. S. C. A., is itself in violation of the 5th Amendment to the Federal Constitution and should be declared to be unconstitutional by the Supreme Court of the United States in this proceedings.

The Storage Act requires the legislative act of securing and obtaining an order of the Public Service Commission to precede the judicial act of actual condemnation in a State Court. Since the order of the Commission is a prerequisite to actual condemnation, then it would unalterably follow therefrom that before the property of any person may be condemned as an accomplished fact under the color of the authority granted by the Commission order and the Storage Act upon which it is based, the order of the Commission must be a final determinative order as against further attack on its validity and legality and as against the charge that the Storage Act is repugnant to the 14th Amendment to the Federal Constitution.

So long as the legislative act, which must precede the judicial act of condemnation, remains incomplete because review proceedings have been taken from the legislative order, then the condition for the maintenance of the further judicial act has not as yet arisen. If, nevertheless, condemnation is permitted in the Missouri Courts on the

basis of this order, which is not as yet final and effective in the accepted legal sense, then there is a denial of due process of law to Petitioners within the contemplation and meaning of the 14th Amendment to the Federal Constitution.

The question then arises: Has there been a procedural denial of due process of law to Collins Brothers upon the record in this case, where the State Courts have denied a stay against the destruction of their property interests in the condemned formations before they shall have had the opportunity to first secure a definitive ruling by the Court of final jurisdiction and last resort on the validity of the order of the Commission, the decree of condemnation and the constitutionality of the Storage Act? If the Respondent, Laclede, was not now actually exercising ownership of the property taken in the condemnation proceedings and using the same to the possible destruction and most certainly to effect a change in its natural state, physical characteristics and conditions, then there would be no occasion for the exercise of equity jurisdiction in this or any other Court or for the issuance of injunctive relief to maintain status quo of that property, pending a decision in the Supreme Court of the United States, as to the validity of the Commission order, th validity of the condemnation decree and the Federal constitutionality of the Storage Act. But this is not the case.

This Court has decided three cases which are decisive in this case as to whether Collins Brothers have been denied procedural due process of law. It is submitted that on the face of the record Collins Brothers have been denied procedural due process of law under the facts decided by the Supreme Court of the United States in **Porter v. Investors Syndicate,** 286 U. S. 461, 52 S. Ct. 617, 76 L. Ed. 1226, Rev. 52 F. 2d 189, Reh. Den. 53 S. Ct. 132, 287 U. S. 346, where this principle of law was stated,

and **Pacific Telephone & Telegraph Co. v. Kuykendall**, 265 U. S. 196, 44 S. Ct. 553, 68 L. Ed. 975, and **Oklahoma Natural Gas Co. v. Russell**, 261 U. S. 290, 43 S. Ct. 353, 67, L. Ed. 659, where the stated principle of law was applied.

The Supreme Court of the United States, in **Porter v. Investors Syndicate**, supra, stated the principle of law to be:

> "Where, as ancillary to the review and correction of administrative action, the state statute provides that the complaining party may have a stay until final decision, there is no deprivation of due process, although the statute in words attributes final and binding character to the initial decision of a board or commissioner. **Pacific Live Stock Co. v. Lewis**, 241 U. S. 440, 454, 36 S. Ct. 637, 60 L. Ed. 1084. But where either the plain provisions of the statute (**Pacific Tel. & Telegraph Co. v. Kuykendall**, 265 U. S. 196, 203, 204, 44 S. Ct. 553, 68 L. Ed. 975), or the decisions of the state courts interpreting the act (**Oklahoma Nat. Gas. Co. v. Russell**, 261 U. S. 290, 43 S. Ct. 353, 67 L. Ed. 659) precludes a supersedeas or stay until the legislative process is completed by the final action of the reviewing court, due process is not afforded, and in cases where the other requisities of federal jurisdiction exist recourse to a federal court of equity is justified."

and with reference to the right to take effective action pending review of the administrative order, the Court said:

> "* * * As we have seen, under the Montana statute the administrative proceeding is not complete until the court shall have acted in revision and correction of the commissioner's decision. It would be strange indeed if the commissioner's action thus subject to alteration were nevertheless to be made as effective to harm the parties in interest as if no further administrative procedure existed."

Mr. Justice Holmes, applying the principle stated in the **Porter Case**, supra, had this to say in the case of **Oklahoma Natural Gas Co. v. Russell**, supra:

> "* * * They applied to the Commission for higher rates but were denied an advance. The Constitution of Oklahoma, admitted to be like that of Virginia, dealt with in **Prentis v. Atlantic Coast Line Co.**, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150, gives an appeal to the Supreme Court of the State, acting in a legislative capacity as explained in the case cited, with power to substitute a different order and to grant a supersedeas in the meantime. Appeals were taken to the Supreme Court and supersedeas was applied for but refused. The appeals are still not decided. After the plaintiffs had been denied a supersedeas by the Supreme Court, they filed these bills alleging that the present rates are confiscatory, setting up their constitutional rights and asking preliminary injunctions, and permanent injunctions unless the Supreme Court should allow adequate rates. Applications for temporary injunctions supported by evidence were heard by three judges but were denied by the majority on the authority of the Prentis Case. Appeals were taken directly to this Court."
>
> * * * * * * * *
>
> "Coming to the principal question, if the plaintiffs respectively can make out their case, as must be assumed for present purposes, they are suffering daily from confiscation under the rate to which they now are limited. They have done all that they can under the state law to get relief and cannot get it. If the Supreme Court of the State hereafter shall change the rate, even nunc pro tunc, the plaintiff's will have no adequate remedy for what they may have lost before the Court shall have acted. **Springfield Gas & Electric Co. v. Barker** (D. C.), 231 Fed. 331, 335. In such a

state of facts **Prentis v. Atlantic Coast Line Co.** has no application. See **Love v. Atchison, T. & S. F. Ry. Co.**, 185 Fed. 321, 324, 325, 107 C. C. A. 403. Rules of comity or convenience must give way to constitutional rights. In the case cited there was no doubt as to the jurisdiction of the Circuit Court but simply a decision that the bills should be retained to await the result of appeals if the companies saw fit to take them. 211 U. S. 232, 29 Sup. Ct. 67, 53 L. Ed. 150. * * *"

* * * * * * * *

"As in our opinion the District Court had jurisdiction and a duty to try the question whether preliminary injunctions should issue, and as that question has not yet been considered, the cases should be remanded to that Court with directions to proceed to the trial. * * *"

Mr. Chief Justice Taft, also applying the principle stated in the **Porter Case**, supra, stated in **Pacific Telephone & Telegraph Co. v. Kuykendall**, supra, as follows:

"It is apparent from these provisions that after the commission finally denied the increase of rates applied for, the company had exhausted its administrative remedy to avoid the alleged confiscatory rates under which it was compelled to render the service. It had, therefore, no recourse but to a court. Both by reason of diverse citizenship and because of the federal constitutional question the federal court of equity was available to it. The state statute forbidding a stay of proceedings until a final judicial decree was rendered, of course, could not prevent a federal court of equity from affording such temporary relief by injunction as the principles of equity procedure required. The conditions set out in the bill, therefore, seem to have made a case ripe for federal relief. **Bacon v. Rutland R. R. Co.**, 232 U. S. 134, 34 Sup. Ct.

283, 58 L. Ed 538; **Prendergast v. N. Y. Tel. Co.**, 262 U. S. 43, 48, 43 Sup. Ct. 466, 67 L. Ed. 853."

* * * * * * *

"In the case before us, the company is shown by the averments of its bill to be suffering daily from confiscation under the rates to which it is now limited. It has done all it could to get relief and cannot get it. * * *"

* * * * * * *

"Under such circumstances comity yields to constitutional right, and the fact that the procedure on appeal in the legislative fixing of rates has not been concluded will not prevent a federal court of equity from suspending the daily confiscation, if it finds the case to justify it. **Oklahoma Gas Co. v. Russell**, 261 U. S. 290, 293, 43 Sup. Ct. 353, 67 L. Ed. 659. In such a case the Prentis case has no application. * * *"

* * * * * * *

"* * * A litigant whose constitutional rights are being invaded, and to whom a statute denies a supersedeas in the state tribunals, may properly base his application for equitable relief on the effect of the statute and the presumption of its validity and is not required to establish that the state statute is not invalid under the State Constitution. * * *"

It is submitted that if Collins Brothers be denied due process of law, which is apparent on the face of the record in this case, then this Court is faced with the alternative of either overruling the **Porter, Kuykendall** and **Russell Cases**, supra, or of holding that Section 2283, Title 28, U. S. C. A., does not prohibit the relief requested by Petitioners in the complaint filed by them in the United States District Court.

The decision of this Court in **Amalgamated Clothing Workers v. Richman Brothers**, 348 U. S. 511, 75 S. Ct. 452, being the latest expression of this Court on the question of

the operation of 2283, is itself illustrative of the limitations which govern the application of 2283 to the record of a particular case. There the charge was made that injunctive relief should be granted against the operation of a State Court decree because the decree was null and void. It was charged that the decree was null and void for the reason that the State Court was wholly without jurisdiction of the subject matter as the State Court and State Statute had invaded a field pre-empted by Congress. This Court on appeal held that an injunction against the State Court proceedings in that case should be denied and declined to invoke an exception to 2283 for the reason that it could not be determined from the record (nor was it demonstrable from the record), without more, that the State Court was wholly without jurisdiction of the subject matter involved. For the areas, held this Court, which have been pre-empted by Congressional action and thereby withdrawn from State Court jurisdiction and power are not susceptible of exact interpretation. In order more, it did not appear from the record in the **Amalgamated Clothing Case** is null and void and hence a denial of due process of law, would require either a further clarification by Congress by Statute of the exact field pre-empted by Congressional action, or, a further judicial interpretation by the Supreme Court of the United States as to the exact limitations of state jurisdiction. Furthermore, it did not apepar from the record in the **Amalgamated Clothing Case** that there was basic plenary equity jurisdiction in the complaint for injunction, that is, irreparable injury, or no adequate remedy at law. To the contrary, it appeared from the decision that the applicant for injunctive relief had not yet applied to the National Labor Relations Board under the Taft-Hartley Act or National Labor Relations Act, as Amended, and in no accepted legal sense could it be then said that the litigant was without legal remedy, which is the keystone to equity jurisdiction.

To the contrary, in the case at bar, Collins Brothers do not rest their application for a stay of the operation and effect of the Commission order and of the decree of condemnation, on the sole charge that the condemnation decree is null and void but, rather, Collins Brothers rests their prayer for injunctive relief in the Federal Courts upon the authority of the principle of law so clearly stated in the **Porter, Kuykendall** and **Russell cases,** namely, that a denial of a stay by the State Courts under the facts of record in this case constitutes a denial of due process of law and deprivation of their constitutional rights.

It is, therefore, most respectfully submitted that the United States Circuit Court of Appeals in and for the Eighth Circuit has decided an important question of Federal law which has not been, but should be, settled by this Court. It is further submitted that the decision of this Court in **Amalgamated Clothing Workers of America et al. v. Richman Brothers Co.,** supra, and the decisions of the Circuit Court of Appeals, Eighth Circuit, following this case are not controlling and decisive of the issues in this case. And, finally, it is still further submitted that if Section 2283, Title 28, U. S. C. A., shall be construed to prohibit the relief requested by Petitioners herein under the facts of the record in this case, then said Section 2283, as so construed, is itself repugnant to the Fifth Amendment of the Federal Constitution and should be so declared by the Supreme Court of the United States.

VIII.

PRAYER OF PETITION.

Wherefore, Petitioners most respectfully pray the Honorable Supreme Court of the United States for the granting of a Writ of Certiorari directed to the United States Court of Appeals for the Eighth Circuit to review the judgment

of that Court entered in Cause No. 15,570, Civil Action, under date of October 26, 1956, and, further, Petitioners pray for such other and further relief as to this Court shall be just, equitable and proper.

C. RICHARD COLLINS and
FLOYD COLLINS,
d/b/a Collins Brothers Oil Company,
By Their Attorneys,

.....

JESSE JEROLD MIDDLETON,
Mt. Vernon, Illinois.

CRAIG & CRAIG,

By .....
HOWARD W. CAMPBELL,
Mt. Vernon, Illinois.

FORDYCE, MAYNE, HARTMAN, RENARD & STRIBLING,

By .....
NELSON W. HARTMAN,

.....
JOSEPH R. LONG,

.....
JOHN P. BAIRD, JR.,
506 Olive Street,
St. Louis, Missouri.

APPENDIX.

United States Court of Appeals
for the Eighth Circuit.

No. 15,570.

C. Richard Collins and Floyd Collins, Co-Partners, d/b/a Collins Brothers Oil Company,

Appellants,

vs.

Laclede Gas Company, a Missouri Corporation; Phil Donnelly, as Governor of the State of Missouri; John M. Dalton, as Attorney General of the State of Missouri; Missouri Public Service Commission, and Tyre W. Burton, Charles L. Henson, E. L. McClintock, Henry McKay Cary, and M. J. McQueen, as Members of and Constituting the Missouri Public Service Commission; and Glenn D. Evans, as General Counsel for the Missouri Public Service Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of Missouri.

J. J. Middleton (Howard W. Campbell, Craig & Craig, Nelson W. Hartman, Joseph R. Long, John P. Baird, Jr., and Fordyce, Mayne, Hartman, Renard & Stribing were with him on the brief), for Appellants.

James M. Douglas (Glenn D. Evans, General Counsel, Frank J. Iuen, Assistant General Counsel, Missouri Public Service Commission, Thompson, Mitchell, Thompson & Douglas, Guy A. Thompson, and Richard L. Eckhart were with him on the brief), for Appellees, Laclede Gas Company et al.

Brief of Appellees, Laclede Gas Company, et al., adopted by Appellees Phil Donnelly, as Governor of the State of Missouri, and John M. Dalton, as Attorney General of the State of Missouri.

(October 26, 1956.)

Before Gardner, Chief Judge, and Vogel and Van Oosterhout, Circuit Judges.

Gardner, Chief Judge.

This action was the product of a process of evolution in that it was developed from various and sundry efforts on the parts of appellants to enjoin the exercise of the power of eminent domain condemning certain alleged property rights of appellants. The various proceedings had and taken by the appellants prior to the institution of this action are set out in great detail in their complaint. The parties will be referred to as they were designated in the trial court.

Plaintiffs are co-partners and oil lessees owning certain property rights in portions of the property sought to be condemned by proceedings in the state court. Defendant Laclede Gas Company is a corporation organized under the laws of the State of Missouri engaged as a public utility in the business of selling and distributing gas to the public in the City of St. Louis, Missouri, and sought to exercise the power of eminent domain. Defendant Missouri Public Service Commission is a state administrative board or commission authorized to determine the rights of gas storage companies to exercise the power of eminent domain. Other defendants named are law enforcement officers of the State of Missouri.

Laclede Gas Company, pursuant to statutory provisions of the State of Missouri, duly applied to the Missouri Pub-

lic Service Commission for an order finding that the exercise by it of the power of eminent domain in connection with its proposed underground gas storage would be in the public interest. Plaintiffs were permitted to intervene and opposed the granting of the order on the ground, among others, that the statute authorizing the issuance of the order was violative of certain provisions of the Constitution of the State of Missouri and of the Constitution of the United States. After full hearing the Commission granted the application and issued an order permitting the institution of condemnation proceedings. Plaintiffs then sought to have the proceedings reviewed and the order reversed by the Circuit Court of Cole County, Missouri. On docketing the application for review in that court plaintiffs removed the proceedings to the United States District Court for the Western District of Missouri but in due course the proceedings were remanded to the Circuit Court of Cole County, Missouri, and that court, after hearing, affirmed the order. From this decision the plaintiffs perfected an appeal to the Supreme Court of the State of Missouri and since the trial of this action the Supreme Court of Missouri has affirmed the judgment of the Circuit Court of Cole County, Missouri, approving the order of the Commission.

Following their unsuccessful efforts to enjoin or stay the state proceedings plaintiffs brought the present action in the United States District Court for the Eastern District of Missouri to enjoin the enforcement of the Missouri Underground Gas Storage Act, Sections 393.410 to 393.510, R. S. Mo., 1949, the enforcement of an order of the Missouri Public Service Commission under the Act, and the enforcement of a decree in condemnation entered by the Circuit Court of St. Louis County, Missouri, under the Act, alleging the unconstitutionality of the statute purporting to authorize the condemnation of their property rights. They sought to have the case heard by a three-

judge court. A three-judge court was thereupon convened and after oral argument of the motions to dismiss the complaint the three-judge court upon its own motion dismissed itself from the case and returned the proceedings to a single judge.

On trial of the action on its merits the court found:

"1. That in 1953 the General Assembly of Missouri enacted the Missouri Underground Gas Storage Act (Sections 393.410-393.510, R. S. Mo., 1949) which grants the power of eminent domain to gas storage companies for the purpose of underground storage of gas and which requires that, prior to the exercise of the power of eminent domain, the condemnor must obtain an order from the defendant Missouri Public Service Commission finding the exercise of the power to be in the public interest.

"2. That defendant Laclede Gas Company, pursuant to said Act, has obtained from the defendant Commission the order required by said Act.

"3. That prior to the filing of the complaint herein, defendant Laclede Gas Company commenced a proceeding in Division 4 of the Circuit Court of St. Louis County, Missouri, to condemn subterranean rights in land to store gas underground, in which proceeding the plaintiffs herein, and others, are defendants.

"4. That such condemnation proceeding was pending in the Circuit Court of St. Louis County when the complaint herein was filed, and is now pending. An interlocutory decree in condemnation has been entered, but such case has not reached final judgment.

"5. That the relief sought in the complaint herein is an injunction to restrain the defendants from enforcing or taking any action pursuant to the Missouri Underground Gas Storage Act or the Commission order thereunder.

"6. That the relief sought in the complaint herein is an injunction to restrain the defendants from doing any act to make effective the interlocutory decree in the condemnation proceeding in the Circuit Court of St. Louis County, and from acquiring any rights under said decree, and from exercising any rights acquired by virtue of said decree."

Based on these findings the court concluded as a matter of law as follows:

"1. That the necessary effect of granting the relief sought in the complaint herein will be to stay proceedings in a state court.

"2. That Section 2283 of Title 28, U. S. C. A., is applicable to this action and prohibits this court from granting the relief which the plaintiffs seek herein.

"3. That there is no equity in the Complaint.

"4. That the defendants' motions to dismiss should be sustained.

"5. That final judgment dismissing plaintiffs' complaint and action should be entered."

The court thereupon entered judgment dismissing the action on its merits. These findings are not challenged on this appeal and there is no contention that plaintiffs are not seeking to enjoin proceedings in a state court.

Section 2283, Title 28, U. S. C. A., provides as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

There is here no contention that this case comes within any of the statutory exceptions to the prohibition of Sec-

tion 2283, Title 28, U. S. C. A. It is, however, contended that the case comes within implied or judicial exceptions. In support of this contention they rely strongly upon **Simon v. Southern R. Co.**, 236 U. S. 115; **Marshall v. Holmes**, 141 U. S. 589; **Wells Fargo & Co. v. Taylor**, 254 U. S. 175; **Porter v. Investors Syndicate**, 286 U. S. 461; **Pacific Tel. Co. v. Kuykendall**, 265 U. S. 196; and **Okla. Gas Co. v. Russell**, 261 U. S. 290. The short answer to this contention is that these cases were all decided before the enactment of Section 2283, Title 28, U. S. C. A. The statute in its present form was enacted in 1948 and in 1955 the Supreme Court of the United States in **Amalgamated Clothing Workers of America et al. v. Richman Brothers Co.**, 348 U. S. 511, had occasion to consider the very contention now urged by plaintiffs in this case. In the course of the opinion it is said, inter alia:

> "We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See **Toucey v. New York Life Ins. Co.**, 314 U. S. 118. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. * * *
>
> * * * * * * *
>
> "* * * This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

This court has had occasion to consider the question in the following cases: **Evans v. St. Louis Housing Authority**, 8 Cir., 226 F. 2d 750; **Norwood v. Parenteau**, 8 Cir., 228 F. 2d 148; and **National Labor Relations Board v. Swift & Company**, 8 Cir., 233 F. 2d 226. In **National Labor Rela-**

tions Board v. Swift & Company, supra, answering the contention that the exceptions contained in the statute might be supplemented by implied or judicial exception, we said:

> "The history, purpose, and construction of section 2283 are fully considered by the Supreme Court in the **Richman** case, supra. The Court states that this enactment revised as well as codified its predecessor, former Section 265 of the Judicial Code, and that by the enactment of Section 2283 Congress 'made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation.'
>
> "**Hence, decisions under the predecessor statute which appear to recognize implied exceptions to the statutory prohibition need not be considered.**" (Emphasis supplied.)

As the plaintiffs have not brought their case within any of the statutory exceptions to the prohibition contained in Section 2283, Title 28, U. S. C. A., we think this fatal to their right to relief and we pretermit any consideration of the other questions ably briefed and argued by counsel for the respective parties. For the foregoing reasons the judgment appealed from is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

(Judgment.)

United States Court of Appeals
For the Eighth Circuit.

No. 15570 September Term, 1956.

Friday, October 26, 1956.

C. Richard Collins and Floyd Collins, co-partners, d/b/a Collins Brothers Oil Company,

Appellants,

vs.

Laclede Gas Company, a Missouri corporation; Phil Donnelly, as Governor of the State of Missouri; John M. Dalton, as Attorney General of the State of Missouri; Missouri Public Service Commission, and Tyre W. Burton, Charles L. Henson, E. L. McClintock, Henry McKay Cary and M. J. McQueen, as Members of and constituting the Missouri Public Service Commission; and Glenn D. Evans, as General Counsel for the Missouri Public Service Commission.

Appeal From the United States District Court
For the Eastern District of Missouri.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause be, and the same is hereby, affirmed.

October 26, 1956.

In the District Court of the United States
For the Eastern District of Missouri,
Eastern Division.

C. Richard Collins and Floyd Collins, co-partners, doing business as Collins Brothers Oil Company,
Plaintiffs,

vs.

Laclede Gas Company, a Missouri corporation; Phil Donnelly, as Governor of the State of Missouri; John M. Dalton, as Attorney General of the State of Missouri; Missouri Public Service Commission, and Tyre W. Burton, Charles L. Henson, E. L. McClintock, Henry McKay Cary, and M. J. McQueen, as Members of and constituting the Missouri Public Service Commission; and Glenn D. Evans, as General Counsel for the Missouri Public Service Commission,
Defendants.

Civil Action
File No. 10,508 (3).

Order.

This cause came on to be heard on defendants' motions to dismiss and the court, having considered the motions to dismiss, the evidence adduced at the hearing of the same, the pleadings, and the argument and briefs of counsel, and being fully advised in the premises, finds the facts to be:

1. That in 1953 the General Assembly of Missouri enacted the Missouri Underground Gas Storage Act (Sections 393.410-393.510, R. S. Mo. 1949) which grants the power of eminent domain to gas storage companies for the purpose of underground storage of gas and which requires that, prior to the exercise of the power of eminent domain, the condemnor must obtain an order from the defendant Missouri Public Service Commission finding the exercise of the power to be in the public interest.

2. That defendant, Laclede Gas Company, pursuant to said Act, has obtained from the defendant Commission the order required by said Act.

3. That prior to the filing of the complaint herein, defendant Laclede Gas Company commenced a proceeding in Division 4 of the Circuit Court of St. Louis County, Missouri, to condemn subterranean rights in land to store gas underground, in which proceeding the plaintiff herein, and others, are defendants.

4. That such condemnation proceeding was pending in the Circuit Court of St. Louis County when the complaint herein was filed, and is now pending. An interlocutory decree in condemnation has been entered, but such case has not reached final judgment.

5. That the relief sought in the complaint herein is an injunction to restrain the defendants from enforcing or taking any action pursuant to the Missouri Underground Gas Storage Act or the Commission order thereunder.

6. That the relief sought in the complaint herein is an injunction to restrain the defendants from doing any act to make effective the interlocutory decree in the condemnation proceeding in the Circuit Court of St. Louis County, and from acquiring any rights under said decree, and from exercising any rights acquired by virtue of said decree.

The court's conclusions of law are as follows:

1. That the necessary effect of granting the relief sought in the complaint herein will be to stay proceedings in a state court.

2. That Section 2283 of Title 28, U. S. C. A., is applicable to this action and prohibits this court from granting the relief which the plaintiffs seek herein.

3. That there is no equity in the Complaint.

4. That the defendants' motions to dismiss should be sustained.

5. That final judgment dismissing plaintiffs' complaint and action should be entered.

It Is, Therefore, Ordered that the motions to dismiss be and the same are hereby sustained. Counsel for defendants will submit appropriate judgment in accordance herewith.

Roy W. Harper,
District Judge.

In the District Court of the United States
For the Eastern District of Missouri,
Eastern Division.

C. Richard Collins and Floyd Collins, Co-Partners, Doing Business as Collins Brothers Oil Company,
Plaintiffs,

vs.

Laclede Gas Company, a Missouri Corporation; Phil Donnelly, as Governor of the State of Missouri; John M. Dalton, as Attorney General of the State of Missouri; Missouri Public Service Commission, and Tyre W. Burton, Charles L. Henson, E. L. McClintock, Henry McKay Cary, and M. J. McQueen, as Members of and Constituting the Missouri Public Service Commission; and, Glenn D. Evans, as General Counsel for the Missouri Public Service Commission,
Defendants.

Civil Action
File
No. 10,508 (3).

Judgment.

This cause came on to be heard on defendants' motions to dismiss and the court, having considered the pleadings, the motions to dismiss, and the argument and briefs of counsel, and the court having made findings of fact and conclusions of law and having granted the said motions,

It is hereby Ordered, Adjudged and Decreed that plaintiffs' action be and it is hereby dismissed with prejudice on the merits, and that defendants recover their costs.

Roy W. Harper,
District Judge.

An Act Relating to the underground storage of gas and to gas storage companies; defining terms; making provisions as to property rights in gas injected into underground storage; making provision as to cases where parts of an underground storage reservoir lie beneath lands of public bodies, as defined, and authorizing such public bodies to grant certain rights in such cases, and providing for proceedings by gas storage companies in such cases as in cases of condemnation, and for service of process on the attorney general when the State is made a party to any such case; providing for condemnation by gas storage companies of land and interests in land and certain temporary licenses necessary or convenient to their operations as gas storage companies, subject to certain limitations and provisions; providing for orders of the Public Service Commission as prerequisite to the exercise of the right to condemn strata or formations for the utilization thereof for the underground storage of gas or of the right to proceed as in cases of condemnation in the case of lands of public bodies or of the right to acquire by condemnation temporary licenses; providing against the impairment of any right to exercise the power of eminent domain vested in any gas storage company by any other law.

Be It Enacted by the General Assembly of the State of Missouri, as Follows:

393.410. **Definitions.** As used in Sections 393.410 to 393.510: (1) "gas" means manufactured or natural gas or any combination or mixture thereof, whether or not the natural gas has been processed by removal of component parts not essential to its use for light, heat or power; (2) "underground storage" or "underground storage of gas" means the storing of gas in a geological stratum or strata, formation or formations lying beneath the surface of the earth; (3) "underground storage reservoir" means the

stratum or strata, formation or formations which are, or are to be, used for underground storage of gas; (4) "gas storage company" means any corporation, partnership or person or its trustees or receivers appointed by any Court whatsoever, including any municipal corporation, any gas corporation as defined by Section 386.020, R. S. Mo., and any corporation engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale, engaged in or which desires to engage in the business of the underground storage of gas intended in whole or in part for either or ultimate distribution to the public by means of pipe or pipe lines.

393.420. **Acquisition of Right to Use Storage Reservoir Under Publicly-Owned Lands.** In any case where a part of an underground storage reservoir lies in or beneath lands (including the beds of navigable waters) of any public body, a gas storage company desiring to utilize the same for the underground storage of gas may acquire the right to do so, which right every such public body is hereby authorized to grant for such consideration as may be agreed upon with such gas storage company. In the event such gas storage company and such public body cannot agree upon such consideration, or in case there is no public authority other than the General Assembly which has power to enter into such an agreement, then such gas storage company may acquire the right to utilize such part of such underground storage reservoir, but not, in such case, the surface of the lands under which such part of such reservoir lies, for the underground storage of gas, by proceeding in the same manner and with the same effect as in cases of condemnation under Section 393.430, subject to the limitations and provisions in such cases provided, and in any such case to which the State of Missouri shall be made a party service of process may be had upon the attorney general. The term "public body" as used in this section means the State of Missouri, or any department,

board, commission, bureau, institution, public agency or political subdivision thereof, including municipal corporations and quasi-municipal corporations of all kinds.

393.430. **Gas Storage Company May Exercise Eminent Domain—Purposes—Procedure.** Subject to the limitations and provisions provided in Sections 393.410 to 393.510 any gas storage company may acquire by condemnation land or interests in land, necessary or convenient to its operations as a gas storage company, including, but without limiting the generality of the foregoing, the following operations, to-wit: such operations, including the drilling of test holes or wells, as may be necessary or convenient to determine the suitability of a geological stratum or strata, formation or formations for the underground storage of gas (and for this purpose temporary licenses may be acquired by condemnation hereunder); the laying, operation and maintenance of pipes and pipe lines necessary or convenient for the transportation of gas to the place of underground storage from the source of such gas; the preparation, establishment, maintenance, utilization and operation of the underground storage reservoir for the underground storage of gas and the injection of gas into such underground storage reservoir and the withdrawal thereof therefrom; the laying, operation and maintenance of pipes and pipe lines necessary or convenient for the transportation of gas from the place of underground storage to any other place; the installation, operation and maintenance of any and all facilities and equipment necessary or convenient in connection with any of the foregoing operations. Any gas storage company desiring to acquire by condemnation land or any interest therein or a temporary license pursuant to this Section, may to that end proceed as provided by, and subject to the provisions of Chapter 523, R. S. Mo., the provisions of which chapter are hereby made applicable in such case, but subject, further, to the limitations and provisions provided in Sections 393.410 to 393.510.

393.440. **Powers Not to Be Exercised Until Approved by Public Service Commission.** None of the following rights, to-wit: (1) the right to condemn any stratum or formation for the purpose of utilization thereof for the underground storage of gas, or (2) the right to proceed as in cases of condemnation provided for by Section 393.420, or (3) the right to acquire by condemnation temporary licenses pursuant to Section 393.430, may be exercised by any gas storage company unless such company shall have first obtained an order from the Public Service Commission finding that the exercise of such right by such company will be in the public interest. Such order shall be made after hearing, and shall be effective and subject to application for rehearing and to judicial review, as in the case of other orders of the Public Service Commission.

393.450. **Buildings Not to Be Condemned.** No gas storage company shall, by virtue of Sections 393.410 to 393.510, be authorized to enter, appropriate or condemn any dwelling, barn, store, warehouse or other building.

393.460. **Strata and Formations Not Subject to Condemnation.** No stratum or formation lying less than 500 feet below the surface, and no stratum or formation containing potable water conforming to the mineral content standards of the United States Public Health Service, and no stratum or formation containing natural gas or oil producible through primary production methods in commercially paying quantities or producing domestic supplies of natural gas or oil, and no stratum or formation containing coal or the ores of lead, zinc, iron, copper, barium, or any precious mineral, producible on a commercially paying basis, shall be subject to be condemned for utilization for the underground storage of gas therein.

393.470. **Limitation on Condemnation of Property Held for Public Uses.** In case the lands sought to be condemned pursuant to Sections 393.410 to 393.510 are held by any

corporation, the right to condemn the same pursuant to Sections 393.410 to 393.510 shall be limited to such use as shall not materially interfere with the public uses to which, by law, such corporation is authorized to put said lands.

393.480. **Law Not to Restrict Other Powers of Eminent Domain.** Nothing herein contained shall limit or impair any right to exercise the power of eminent domain which may be vested in any gas storage company by any other law.

393.490. **Rights of Owner of Land in Condemned Strata.** Any and all rights to utilize any strata or formations, underlying any land, for the underground storage of gas, which are acquired by any gas storage company by condemnation pursuant to Section 393.430 or by proceeding as in cases of condemnation pursuant to Section 393.420, shall be subject to the right of the owner of such land or of other rights or interests therein, to drill, bore or sink shafts through such strata or formations, for the purpose of exploring for or recovering oil, gas or other minerals from other strata or formations, in such manner as will not hamper or impair the operation of the gas storage reservoir, or result in the pollution of gas stored therein, or permit the escape of any gas therefrom.

393.500. **Gas in Underground Storage Personal Property.** Whenever gas belonging to any person or corporation is injected into underground storage, it shall, unless and until it be abandoned by the owner thereof, be and remain personal property and the property of the owner thereof, and shall not be subject to production, taking, reduction of possession, waste or interference by the owner of the surface of the land under which the gas storage company has obtained the right to store gas, or by any person whomsoever except the owner thereof and persons acting by his authority; provided nothing herein con-

tained shall apply to a person under whose land gas may be stored without the gas storage company having obtained the right to store gas.

393.510. **Limitations to Begin, When—Cause Deemed to Accrue, When.** In civil actions arising under or by virtue of Sections 393.410 to 393.510 and by virtue of the powers herein authorized, the Statute of Limitations shall not begin to run against any right or cause of action until the right or cause of action shall have accrued; provided that for the purposes of Sections 393.410 to 393.510 the right or cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.

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No. 708.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

C. RICHARD COLLINS and FLOYD COLLINS, Co-Partners, Doing Business as COLLINS BROTHERS OIL COMPANY,
Petitioners,

vs.

LACLEDE GAS COMPANY, a Missouri Corporation; PHIL DONNELLY, as Governor of the State of Missouri; JOHN M. DALTON, as Attorney General of the State of Missouri; MISSOURI PUBLIC SERVICE COMMISSION and TYRE W. BURTON, CHARLES L. HENSON, E. L. McCLINTOCK, HENRY McKAY CARY and M. J. McQUEEN, as Members of and Constituting the Missouri Public Service Commission, and GLENN D. EVANS, as General Counsel for the Missouri Public Service Commission,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

Judgment was entered by the District Court without opinion. The District Court's findings of fact, conclusions of law, and judgment are set forth in the Appendix at pp. 57-60 of the Petition.

The opinion of the Court of Appeals for the Eighth Circuit is reported in 237 F. (2d) 633 and is set forth in the Appendix at pp. 49-55 of the Petition.

JURISDICTION.

Section 1254 (1) of Title 28, U. S. C. A., is relied upon by the petitioners as authority for the Court to consider the Petition (Petition at p. 3).

STATUTE INVOLVED.

The statute involved is Section 2283 of Title 28, U. S. C. A., which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

QUESTION PRESENTED.

Whether the Federal courts can recognize any **implied** exception to the prohibition of Section 2283, Title 28, U. S. C. A., against Federal interference with State judicial proceedings.

STATEMENT.

Respondent Laclede Gas Company ("Laclede") is a Missouri public utility corporation which is and for many years has been engaged in distributing gas to the public in the City of St. Louis and in St. Louis County, Missouri. It is subject to regulation and is regulated by the respondent Missouri Public Service Commission ("Commission") (R. 5).

Laclede buys all of its gas from an interstate pipeline company which brings the gas to St. Louis from Louisiana and Texas. The public demand for gas for house-heating is very great in the area Laclede serves. Laclede has never

been able to meet this demand because the supply of gas brought by the interstate pipeline is limited. In cold weather the demands of the public for house-heating gas far exceed the supply that the pipeline brings (R. 5).

Seeking to improve this situation, Laclede in 1953 conducted exploration for an underground area where gas could be stored in the pore spaces of rocks. Having discovered such an underground storage area in the northern part of St. Louis County, Laclede applied to the Commission for an order finding it to be in the public interest for Laclede to exercise the right to condemn storage rights in the underground area if such rights could not be obtained by negotiation (R. 5).

The General Assembly of Missouri in 1953 had enacted a statute (Sec. 393.410-393.510, R. S. Mo. 1949, Laws of Missouri 1953, pp. 513-517, hereinafter called "Storage Act") which granted the right to storage companies, including Laclede, to condemn underground gas storage rights, provided the Commission first found that the exercise of such right would be in the public interest. It was under this statute that Laclede applied to the Commission (R. 3-5).

The Storage Act does not permit the Commission to make an order condemning property. The Commission order permitted by that Act determines only that it will be in the public interest for a gas storage company to condemn property, if necessary, in a separate and independent proceeding in court. Actual taking of property can be accomplished only by filing a court action in the State circuit court where the land is located. In the State circuit court the issues of public use and just compensation are tried and the rights sought are condemned by court decree. The court action in which rights are actually taken is governed by Chapter 523, R. S. Mo. 1949, which contains the general condemnation statutes of Missouri (Appendix, p.

63 of Petition). The constitutional validity of Chapter 523 has never been challenged.

The petitioners Collins Bros. Oil Company ("Collins Bros.") appeared in the Commission proceeding and opposed Laclede's application, taking the position that the Storage Act was unconstitutional and that it was not in the public interest for Laclede to exercise the right to condemn in order to establish the gas storage field. Collins Bros. alleged that they were lessees under oil leases on some of the land involved, that they were producing oil from a formation above the proposed gas storage formations, and that the gas storage might interfere with their oil production (R. 6).

Out of this controversy there arose three separate but interrelated matters of litigation between Laclede and Collins Bros.

The Commission proceeding.

The first matter of litigatian concerned the order that the Commission entered, effective December 7, 1954, finding it in the public interest for Laclede to exercise the right to condemn underground gas storage rights, if necessary, in four formations lying below the formation from which Collins Bros. was producing oil (R. 12).

Collins Bros. appealed from the Commission order, first to the Circuit Court of Cole County, where the order was affirmed (R. 20-21), then to the Supreme Court of Missouri, where the order was again affirmed. The opinion of the Supreme Court of Missouri is reported in 293 S. W. (2d) 345. The decision there was that the evidence supported the Commission's finding of public interest and that the Storage Act was a valid statute as against the constitutional attacks made upon it by Collins Bros.

The Missouri statutes governing appeals from orders of the Commission provide that the Circuit Court reviewing

the order may, in its discretion, stay or suspend the operation of the order, but not unless the Circuit Court after a hearing makes a specific finding, based upon evidence submitted to it, that great or irreparable damage would otherwise result, and not unless the person seeking the stay shall first have filed a suspending bond sufficient in amount and security to secure the prompt payment by such person of all damages caused by the delay in the enforcement of the order (pp. 12-13 of Petition).

When Collins Bros. appealed from the Commission order they asked the Circuit Court of Cole County to grant them a stay (R. 71-72). However, Collins Bros. did not comply with the provisions of the Missouri statute. They did not present, or offer to present, any evidence of irreparable injury. Further, Collins Bros. offered only a nominal bond. The Circuit Court of Cole County held that under the Missouri statute it had no power to grant a stay on a nominal bond (S. R.* 43).

While their appeal from the Commission order was pending in the Supreme Court of Missouri, Collins Bros. asked that Court for a stay. Again no evidence of irreparable injury was offered and again the stay was sought "without Bond" (R. 163). Under these circumstances the Supreme Court of Missouri denied a stay (R. 146). In the District Court below in this case counsel for Collins Bros. admitted, under questioning by the Court, that he could not say his clients would not have been granted a stay had they been willing to post the necessary bond (S. R. 54).

Collins Bros. presently have pending in this Court a Jurisdictional Statement and a Notice of Appeal from the judgment of the Supreme Court of Missouri (p. 24 of Petition). Rule 18 of the Rules of this Court provides for a motion for a stay of the judgment reviewed, provided,

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* "S. R." refers to Supplemental Record of Appellees in the United States Court of Appeals for the Eighth Circuit.

however, that the movant tenders a supersedeas bond conditioned for the satisfaction of the judgment in full, together with costs, interest and damages, for delay. Though the judgment of the Supreme Court of Missouri has been final for more than five months, Collins Bros. have not invoked this remedy of stay (p. 23 of Petition).

The condemnation suit.

The second matter of litigation was a condemnation suit brought by Laclede in the Circuit Court of St. Louis County after the effective date of the Commission's order. This was the separate court action which the Storage Act requires for actual condemnation of rights as distinguished from the Commission order which merely finds it in the public interest for condemnation to be exercised. In the court action Laclede sought to acquire underground storage rights in the same four formations referred to in the Commission's order (R. 18).

The defendants in the condemnation suit included those persons from whom Laclede could not acquire storage rights by negotiation. Although the Commission had found there was no oil or gas in the 4 formations sought for storage (R. 58), and it was therefore doubtful that Collins Bros. as lessees under oil leases had more than a technical interest, Laclede joined Collins Bros. as defendants (R. 18). The Circuit Court subsequently found that there was no oil or gas in the 4 formations (R. 101).

The condemnation suit, with Collins Bros. participating, proceeded to the entry of an interlocutory decree in condemnation. Commissioners were appointed to assess the damages to the various defendants (R. 29-30). The Commissioners filed their report, and Laclede paid into court the damages awarded (R. 127-128). Thereupon, as provided by Missouri Law, Laclede became the owner of the storage rights in the 4 formations, and then commenced

and has since continued the storage of gas therein (R. 30-31; S. R. 89).

The condemnation suit was and still is a pending State court proceeding. In that suit Laclede acquired from Collins Bros. only the latter's technical right as an oil lessee to search for oil and gas in 4 formations which were found to contain no oil or gas (R. 58, 101).

Collins Bros. state in their Petition (p. 21) that all further proceedings in the condemnation suit affect only the amount of compensation paid by Laclede. They neglect to state that the entire case is subject to judicial review in the appellate courts of Missouri, not only on the issue of just compensation, but also on the issues of public use, prior negotiation, and statutory authority to condemn.

The present case.

The third matter of litigation is the one which is now before this Court. It was commenced by Collins Bros. filing a Complaint in the District Court on November 18, 1955 (R. 1). This filing occurred more than a month after the State court in the condemnation suit had decreed condemnation and had appointed commissioners (R. 29). The prayer of Collins Bros. for an immediate restraining order was not pressed, with the result that by the time the District Court heard the case Laclede had paid the condemnation awards into court and had been injecting gas into storage for approximately 6 weeks (R. 128; S. R. 8-9).

The relief sought by Collins Bros. in the District Court was an injunction to prevent Laclede from proceeding further in the condemnation suit and to prevent Laclede from exercising any rights acquired by virtue of the decree in condemnation (R. 40-41). The Complaint indicated that

Collins Bros. would not furnish a bond as a condition to obtaining an injunction (R. 44).

It is an admitted fact that the primary purpose and the necessary effect of the injunction sought in this case is to stay proceedings in a State court—the condemnation suit in the Circuit Court of St. Louis County. This was recognized by Collins Bros. in their Complaint (R. 41-43). It was admitted in oral argument in the District Court (S. R. 30). The District Court so concluded as a matter of law (R. 166; Appendix at p. 59 of Petition). The Court of Appeals noted that this conclusion was not challenged and that "there is no contention that plaintiffs are not seeking to enjoin proceedings in a state court" (Appendix at p. 53 of Petition).

Another admitted fact is that the Complaint does not attempt to nor does it allege a case falling within any of the exceptions which have been written by Congress into Section 2283, Title 28, U. S. C. A. Collins Bros. did not contend in either the District Court or the Court of Appeals, and do not contend in this Court, that any of the statutory exceptions are applicable. The Court of Appeals noted in its opinion that "there is here no contention that this case comes within any of the statutory exceptions to the prohibition of Section 2283, Title 28, U. S. C. A." (Appendix, at pp. 53-54 of Petition).

Before the cause was heard by the District Court, Laclede and the other respondents had filed a Motion to Dismiss on the grounds that Section 2283, Title 28, U. S. C. A., prohibited the granting of the relief sought, that the relief sought would require the District Court to act as a court of review for the State courts, and that the District Court was prevented by Rule 65 of the Federal Rules of Civil Procedure from granting an injunction without bond as prayed by Collins Brothers (R. 127-131). These respondents had also filed an Answer setting up the

same grounds for dismissal, as well as numerous defenses on the merits of the relief sought (S. R. 1-10).

We should point out here that the statements throughout the Collins Bros.' Petition (for example, p. 38) that their property is being altered to their irreparable damage and injury, are based only upon the allegations in their complaint, not upon proof. In the Answer filed below by these respondents (S. R. 1-10) these allegations of injury and damage are expressly denied. In the condemnation suit sought to be enjoined, Laclede acquired from Collins Bros. only a technical right to explore for oil where it had been proved there was no oil (R. 58, 101).

The Answer also contained admissions of many of the historical facts alleged, and the allegations thus admitted formed the basis for the District Court's findings of fact (R. 165-166).

The District Court sustained the Motion to Dismiss and entered judgment dismissing Collins Bros.' action (Appendix, at pp. 57-60 of Petition). The Court of Appeals affirmed the judgment, holding that Section 2283, title 28, U. S. C. A., prohibited the injunctive relief sought by Collins Bros. since the case did not fall within any of the statutory exceptions (Appendix, at pp. 54-55 of Petition).

ARGUMENT.

Respondents submit that there are no special and important reasons why this Court should review the decision of the Court of Appeals for the Eighth Circuit. Quite to the contrary, there are important reasons why certiorari should be denied.

The petitioners seek certiorari upon the sole ground that the Court of Appeals "has decided an important question of Federal law which has not been, but should be, settled by this Court" (p. 3 of Petition).

The question decided by the Court of Appeals was simply that Section 2283, Title 28, U. S. C. A., prevents a Federal Court from issuing an injunction to stay proceedings in a State Court where none of the exceptions set out in Section 2283 are applicable. It was not necessary for the Court of Appeals to decide any of the usual preliminary questions because it is admitted that the injunction sought would stay proceedings in a State court and it is admitted that none of the statutory exceptions are applicable (pp. 6-9 of Petition).

Respondents say that certiorari should be dismissed because the question decided by the Court of Appeals has already been decided, in the same way, by this Court in **Amalgamated Clothing Workers of America et al. v. Richman Brothers**, 348 U. S. 511, 99 L. Ed. 600, 75 S. Ct. 452 (April 4, 1955).

Certiorari should be denied for the further reason that the petitioners, by reason of their failure to comply with and actually invoke State remedies, are in no position to claim a denial of due process of law as a basis for an implied exception to Section 2283.

I.

Certiorari Should Be Denied Because the Decision Below Is Identical With a Prior Decision of This Court.

A very simple question was presented to the Court of Appeals for the Eighth Circuit. The District Court had dismissed a complaint seeking injunctive relief. It was admitted in the Court of Appeals that the injunction sought would have stayed proceedings in a State Court and that none of the statutory exceptions to Section 2283 was applicable (Appendix at p. 53 of Petition). The Court of Appeals accordingly held that "as the plaintiffs have not brought their case within any of the statutory exceptions contained in Section 2283, Title 28, U. S. C. A., we think this fatal to their right to relief" (Appendix at p. 55 of Petition).

In reaching its decision the Court of Appeals relied upon and quoted from the decision of this Court in **Amalgamated Clothing Workers of America et al. v. Richman Bros.**, 348 U. S. 511, 99 L. Ed. 600, 75 S. Ct. 452 (1955), where this Court said (99 L. Ed., l. c. 607):

> "We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See Toucey v. New York Life Ins. Co., 314 U. S. 118, 86 L. Ed. 100, 62 S. Ct. 139, 137 A. L. R. 967. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. * * *.
>
> "* * * This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

The Court of Appeals correctly said that the very contention presented to it had been presented to this Court. Both courts clearly held that the only exceptions to Section 2283 are those set out in the statute itself. Inasmuch as petitioners relied solely upon an implied exception, and a new one at that, they were clearly not entitled to the injunctive relief they sought.

Petitioners have attempted to show in their Petition that the **Amalgamated** case is not controlling. They say, in effect, that this Court would have invoked an implied exception to Section 2283 if it had been clear in the **Amalgamated** case that the State court decree there sought to be enjoined was actually null and void (p. 46 of Petition). We think it is clear that this is not a correct interpretation of the **Amalgamated** opinion.

In **Amalgamated**, as here, the lower Federal courts had ruled that Section 2283 prohibited an injunction to stay proceedings in a State court since that case did not come within any of the statutory exceptions. In this Court it was contended that the State court was wholly without jurisdiction and that this fact was a sufficient basis for a judicial exception to the prohibition of the statute.

What this Court said in **Amalgamated** makes it clear that the affirmance of the lower courts was not based upon lack of proof that the State court was without jurisdiction. The portion of the opinion referred to by the present petitioners (p. 46 of Petition), is as follows (99 L. Ed., l. c. 608):

> "We are further admonished against taking the liberty of interpolation when Congress clearly left no room for it, by the inadmissibility of the assumption that ascertainment of pre-emption under the Taft-Hartley Act is self-determinative or even easy. As we have noted in the Weber case, 'the areas that have been pre-empted by federal authority and thereby

withdrawn from state power are not susceptible of delimitation by fixed metes and bounds.' 348 U. S. at 480. What is within exclusive federal authority may first have to be determined by this Court to be so."

The sole purpose of this statement was to make it clear that the Court was not deciding the question whether the State court was acting in an area of exclusive Federal authority. It would have been necessary to decide that question only if it would have made a difference in the application of Section 2283. This Court held that it would make no difference. This is clear from reading the balance of the Amalgamated opinion.

In **Amalgamated**, this Court assumed, for the purpose of ruling upon the application of Section 2283, that the State court was without jurisdiction. At 99 L. Ed. 606, the Court said:

> "Under the decision in Weber v. Anheuser-Busch, Inc., we may assume that the conduct in controversy is subject to whatever relief the Taft-Hartley Act may afford, and therefore is outside State Authority."

Then followed the statement that the Court need not go into the judicial exception cases decided prior to 1948 (99 L. Ed. 607).

Following this the Court considered the legislative history of the 1948 enactment of Section 2283 and said (99 L. Ed. 607):

> "In the face of this carefully considered enactment, we cannot accept the argument of petitioner and the Board, as amicus curiae, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field pre-empted by Congress.' No such exception has been

established by judicial decision under former § 265. In any event, Congress has left no justification for its recognition now * * *."

Finally, the Court considered the statutory exceptions to Section 2283 and found that none were applicable (99 L. Ed. 608-610).

We submit that the **Amalgamated** decision is subject to one interpretation only—that no exceptions to Section 2283 can be implied and whether the State court action in question is valid or invalid is immaterial.

This interpretation is not ours alone. The **Amalgamated** decision has been so interpreted by the Courts of Appeal for the Third[1], Fifth[2], Sixth[3] and Eighth[4] Circuits, sometimes without specific reference to the decision.

Certiorari was sought in two of the Eighth Circuit cases **(Evans v. St. Louis Housing Authority and Norwood v. Parenteau)** and was denied by this Court. 350 U. S. 993, 100 L. Ed. 859, 76 S. Ct. 542, and 351 U. S. 955, 100 L. Ed. 1478, 76 S. Ct. 852.

The Court of Appeals in the case at bar was clearly correct when it said that the question before it had been decided by this Court. There is no question but that the

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[1] *Nongard et al. v. Burlington County Bridge Commission et al.*, 229 F. (2d) 622 (C. A. 3rd, 1956), l. c. 625; *In re Magnus Harmonica Corporation*, 233 F. (2d) 803 (C. A. 3rd, 1956), l. c. 804.

[2] *Baber v. Texas Utilities Company et al.*, 228 F. (2d) 665 (C. A. 5th, 1956), l. c. 666.

[3] *Sexton v. Barry et al.*, 233 F. (2d) 220 (C. A. 6th, 1956), l. c. 223-224.

[4] *Evans v. St. Louis Housing Authority*, 226 F. (2d) 750 (C. A. 8th, 1955), l. c. 752; *Norwood v. Parenteau et al.*, 228 F. (2d) 148 (C. A. 8th, 1955), l. c. 150; *National Labor Relations Board v. Swift and Company*, 233 F. (2d) 226 (C. A. 8th, 1956), l. c. 230; *Collins v. Laclede Gas Company et al.*, 237 F. (2d) 633 (C. A. 8th, 1956), l. c. 636.

Court of Appeals followed the decision in the **Amalgamated** case. We believe it necessarily follows that petitioners are wrong in their contention that there is present in this case a question of Federal law which should be decided by this Court.

Certiorari was granted in the **Amalgamated** case because the 1948 enactment of Section 2283 had not then been authoritatively interpreted and because the application of the statute in the field of labor relations was important (99 L. Ed. at 606). We doubt very much that the same importance would have attached to this case which deals with an isolated situation under a State condemnation statute. However that may have been, Section 2283 has now been authoritatively interpreted and the Court of Appeals followed the authoritative interpretation. We can think of no stronger reason for denying certiorari in this case.

II.

Petitioners Have Not Been Denied Due Process of Law.

One of petitioners' contentions is that Section 2283 itself denies them due process of law if it is interpreted to prohibit Federal court interference in this case.

This contention should not be persuasive to the granting of a writ of certiorari. The contention was, in substance, decided adversely to petitioners in the **Amalgamated** case. In that case the argument was made that opportunity for effective union activity would be diminished or lost if the Federal courts were not allowed to intervene. In dismissing this argument, this Court said (99 L. Ed. 609):

> "The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and the 'gap' complained of is impatience with the appellate process if state

courts go wrong. But during more than half of our history Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. With limited exceptions, it was not until 1875 that the lower federal courts were given general jurisdiction over federal questions. During that entire period, the vindication of federal rights depended upon the procedure which petitioner attacks as so grossly inadequate that it could not have been contemplated by Congress. The prohibition of § 2283 is but continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts.

"We cannot assume that this confidence has been misplaced. * * *."

Certainly this Court did not see any denial of due process in holding that the petitioners in the **Amalgamated** case had to protect their Federal rights initially in the State courts.

Petitioners are questioning the power of Congress to withdraw from the lower Federal courts the power to grant injunctions to stay proceedings in State courts in cases which do not fall within the exceptions provided by Congress. The short answer to this is that Congress could even have declined to create any lower Federal courts, leaving litigants to the remedies afforded by the State courts, with such appellate review by this Court as Congress might prescribe. **Lockerty et al. v. Phillips,** 319 U. S. 182, 87 L. Ed. 1339, 63 S. Ct. 1019 (1943), l. c. L. Ed. 1343.

Petitioners also advance a separate and different argument to the effect that the State courts have already denied them due process of law by declining to grant their

requests for a stay of proceedings. This argument attempts to raise an issue that need not be considered by this Court in this case.

The only question this Court needs to decide on the petition for a writ of certiorari is whether Section 2283 admits of any implied exceptions. Since the Court has already held, in the **Amalgamated** case, that there can be no implied exceptions, the Petition should be dismissed. If there can be no implied exceptions, it is not necessary to consider whether or not the petitioners would have had a basis for an implied exception had Congress not provided against such implications by the courts.

Even if the subject of implied exceptions were still open, the cases cited by petitioners would not help them. The three cases cited (**Porter v. Investors Syndicate**, 286 U. S. 461, 76 L. Ed. 1226, 52 S. Ct. 617 [1932]; **Pacific Telephone & Telegraph Co. v. Kuykendall**, 265 U. S. 196, 68 L. Ed. 975, 44 S. Ct. 553 [1924]; and **Oklahoma Natural Gas Company v. Russell**, 261 U. S. 290, 67 L. Ed. 659, 43 S. Ct. 353 [1923]) did not involve Section 2283 and did not involve the enjoining of a prior pending State court proceeding.

There is no occasion for the Court to overrule the **Porter**, **Kuykendall**, and **Russell** cases as petitioners suggest (p. 45 of Petition). Section 2283 was not involved in any of them and they are therefore not inconsistent with this Court's decision in the **Amalgamated** case. Furthermore, all three of those cases were decided prior to the 1948 enactment of Section 2283. If it was ever necessary to overrule them, which we deny, Congress has already accomplished it.

Contrary to the petitioners' suggestion, we suggest that in order to grant certiorari in this case, this Court would have to be willing to overrule its decision in the **Amalga-**

mated case. In addition, the Court would have to believe that there was at least a substantial question of deprivation of due process involved in the case.

There is no question of deprivation of due process in the case. Petitioners' claim is that the denial of a stay by the State courts was a denial of due process of law. This claim cannot be sustained because the petitioners never took advantage of their opportunities to obtain a stay.

On 4 separate occasions the petitioners went through the motions of requesting a stay in the State tribunals. They asked the Commission to stay its order (R. 13, 62). They asked the Circuit Court of Cole County to stay the Commission's order (R. 21, 71-72). They asked the Circuit Court of St. Louis County to stay the condemnation suit (R. 23). They asked the Supreme Court of Missouri to stay both the Commission order and the condemnation decree (R. 147-165).

We say that petitioners only went through the motions of requesting a stay because in none of the 4 instances did they offer evidence of irreparable injury or request the opportunity to offer it, and in all 4 instances they indicated a decided reluctance, if not an outright refusal, to comply with the provisions of State law requiring a bond to secure damages caused by the stay.

When a stay of a Commission order is sought in the Circuit Court of Cole County, the Missouri statutes very specifically require a finding, based upon evidence, of great or irreparable damage, together with a bond sufficient to secure the payment of all damages caused by the delay (pp. 12-13 of Petition). Similar statutory requirements are applicable to the granting of stays or injunctions in Missouri courts generally. Sections 526.030 and 526.070, R. S. Mo., 1949.

The record in this case clearly shows that petitioners' request for a stay in the Supreme Court of Missouri was conditioned "without bond" (R. 163). We submit also that the only reasonable inference from the record is that petitioners declined to furnish other than a nominal bond in the Circuit Court of Cole County (R. 71-72; S. R. 20, 24, 25, 42-44, 56, 57). Petitioners also sought to avoid the requirement of a bond in the District Court in this case (R. 44; S. R. 42-43).

Since petitioners have not availed themselves of the remedies of stay provided for by the laws of Missouri, they cannot claim a denial of due process of law. **Alabama Public Service Commission et al. v. Southern Railway Co.**, 341 U. S. 341, 95 L. Ed. 1002 (1951).

Recognizing this fatal defect in their claim, petitioners have sought to correct it by arguing that they were entitled to a stay "as a matter of absolute right" (p. 39 of Petition). This argument is directly contrary to decisions of this Court that in the absence of a statute granting an absolute right to a stay, the grant or denial of a stay is discretionary. It is not a matter of right, even if irreparable injury might result if the stay is denied. **Re Haberman Manufacturing Company**, 147 U. S. 525, 37 L. Ed. 266, 13 S. Ct. 527 (1893); **Virginian Railway Company v. United States**, 272 U. S. 658, 71 L. Ed. 463, 47 S. Ct. 222 (1926), L. Ed. l. c. 471. Furthermore, this Court has held that the requirement of a suitable bond as a condition of granting a stay is not an arbitrary requirement and is not otherwise offensive to a right conception of due process of law. **Pacific Live Stock Co. v. Lewis**, 241 U. S. 440, 60 L. Ed. 1084, 36 S. Ct. 637 (1916), L. Ed. l. c. 1099.

Petitioners have not been denied due process of law. They have not shown that the Missouri procedure for review of Commission orders is in any way inadequate to preserve for ultimate review in this Court any federal

questions arising out of such orders. **Alabama Public Service Commission et al. v. Southern Railway Co.**, 341 U. S. 341, 95 L. Ed. 1002, 71 S. Ct. 762 (1951), L. Ed., l. c. 1008. Sufficient proof of the adequacy of the review procedures is the fact that petitioners have right now an appeal from the Commission's order pending in this Court on Notice of Appeal and a Jurisdictional Statement (pp. 22, 23, of Petition). It is the fault of petitioners, not the Missouri laws or courts, that the order was not stayed pending the review proceedings.

In their complaint in the District Court, Collins Bros. stated, as a basis for enjoining the condemnation suit, that (R. 32):

> "the order of the Public Service Commission in the instant controversy cannot be final, nor can any rights thereunder be asserted by Laclede by filing, maintaining and prosecuting the said condemnation suit, until the constitutionality of the Gas Storage Act under the Federal Constitution has been determined by the Court of Last Resort, to-wit: The Supreme Court of the United States, in the Review proceedings now pending, or until such Review proceedings are abandoned by Collins Brothers or the same are otherwise terminated in accordance with law * * *."

The statement as such is incorrect, because the Storage Act is presumed to be valid until it is authoritatively determined to be otherwise. In addition, we submit that the relief sought by petitioners in this case has been effectively foreclosed at this time by the final judgment of the Supreme Court of Missouri which held the Commission order to be valid and the Storage Act to be constitutional. While the petitioners are attempting to appeal to this Court from the judgment of the Supreme Court of Missouri, the attempted appeal does not present any substantial Federal question and it should be dismissed for that reason. Upon

dismissal of the appeal the validity of the Commission order and the Storage Act will be established with absolute finality and the basis upon which relief is sought in this case will no longer exist.

We submit that Collins Bros. have been accorded due process of law at every stage of every one of the interrelated proceedings involved. They have had an opportunity to be heard and have been heard at length in every instance. They came into the District Court below only because they were dissatisfied with being unable to convince the State courts that their contentions were meritorious. They sought in the District Court the same relief they could have obtained in the State courts by complying with the reasonable provisions of the Missouri laws. They are in no position to claim a denial of due process of law.

CONCLUSION.

Petitioners are seeking certiorari upon the ground that the Court of Appeals decided an important question of Federal law which they claim has not been, but should be, decided by this Court.

The question of Federal law decided by the Court of Appeals was that there can be no implied exceptions to the prohibition of Section 2283, Title 28, U. S. C. A. We submit that this very question has already been decided by this Court in **Amalgamated Clothing Workers of America v. Richman Brothers**, 348 U. S. 511, 99 L. Ed. 600, 75 S. Ct. 452, and the Petition for Writ of Certiorari should be dismissed for that reason.

As a basis for an implied exception to Section 2283, petitioners claim that they have been denied due process of law in the State courts. We believe it is unnecessary for the Court to reach this question.

If the Court should consider it necessary to consider the question of due process, we submit it is very clear that

there has been no denial of due process, and, therefore, no basis exists for an implied exception to Section 2283, even if an implied exception were permissible. Petitioners cannot complain of a denial of a stay in the State courts where the denial was caused by petitioners' refusal to assume the responsibilities that accompany the granting of a stay. Laclede had a legal right to proceed as it did. The State courts properly refused to interfere with the exercise of that right without proof that petitioners would otherwise be irreparably injured and without the assumption by petitioners on an obligation to bear the damages if they were wrong.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be dismissed.

Respectfully submitted,

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